

3653

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 - - - - - X
4 UNITED STATES OF AMERICA, : 14 CR 026
5 :
6 -against- :
7 United States Courthouse
8 VINCENT ASARO, : Brooklyn, New York
9 :
10 Defendant. : November 9, 2015
11 : 9:30 o'clock a.m.
12 - - - - - X

12 TRANSCRIPT OF TRIAL
13 BEFORE THE HONORABLE ALLYNE R. ROSS
14 SENIOR UNITED STATES DISTRICT JUDGE, and a jury.

14 APPEARANCES:

15
16 For the Government: ROBERT L. CAPERS
United States Attorney
17 BY: NICOLE ARGENTIERI
ALICYN COOLEY
18 LINDSAY GERDES
Assistant United States Attorneys
19 271 Cadman Plaza East
Brooklyn, New York

20
21 For the Defendant: ELIZABETH MACEDONIO, ESQ.
DIANE FERRONE, ESQ.

22 Court Reporter: Gene Rudolph
23 225 Cadman Plaza East
Brooklyn, New York
24 (718) 613-2538

25 Proceedings recorded by mechanical stenography, transcript
produced by computer-aided transcription.

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1 (The following occurred in the absence of the jury.)

2 THE COURT: Please sit down.

3 MS. ARGENTIERI: Judge, I know the defendant is not
4 here. One issue that came up on Friday with the defendant's
5 objections regarding one of the slides, nothing was filed over
6 the weekend.

7 THE COURT: I am assuming that that was dropped. Is
8 that correct?

9 MS. ARGENTIERI: Is --

10 MS. MACEDONIO: We haven't filed anything, no.

11 THE COURT: Nothing was filed. I said if they
12 wanted to pursue it, to file something.

13 MS. ARGENTIERI: Okay.

14 THE COURT: I am assuming that they have not pursued
15 it.

16 MS. ARGENTIERI: Okay.

17 MS. MACEDONIO: During the course of my summations,
18 Ms. Ferrone is going to put things on the Elmo for me.

19 Okay?

20 THE COURT: That's fine.

21 MS. MACEDONIO: Thank you.

22 (Pause).

23 (The defendant is present.)

24 THE COURT: Shall we get the jury?

25 MS. MACEDONIO: Yes, please.

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1 (Jury present.)

2 THE COURT: Good morning, ladies and gentlemen.

3 Please be seated.

4 We are now going to proceed with the summation.

5 Ms. Macedonio.

6 MS. MACEDONIO: Thank you, Your Honor.

7 Good morning, ladies and gentleman.

8 First, we would like to thank you for your undivided
9 attention in what has been a very long trial for all of us.

10 As the end is near, I remind you as he sits here now
11 Mr. Asaro is still presumed to be innocent. As Ms. Ferrone
12 told you in her opening statement, that presumption stays with
13 him. It stays with him forever, unless 12 of you find beyond
14 a reasonable doubt that the charges contained in the
15 indictment have been proven by the government.

16 Since the law presumes Mr. Asaro to be innocent, the
17 burden of proving that he is guilty rests solely with the
18 government. Mr. Asaro never has the burden of proving his
19 innocence or producing any evidence at all. If you find that
20 the government has not met its burden, then you must, you must
21 render a verdict of not guilty.

22 Now, what does proof beyond a reasonable doubt mean?
23 Reasonable doubt is a doubt based upon reason and common
24 sense, the kind of doubt that a reasonable person would
25 hesitate to act with. Proof beyond a reasonable doubt must

1 therefore be proof of such a convincing nature that a
2 reasonable person would not hesitate to rely on it in making
3 important decisions in his or her own life.

4 What it means here is that in order to find
5 Mr. Asaro guilty, 12 of you must be prepared to rely upon the
6 testimony of the cooperators in this case, to not hesitate in
7 believing what they testified to here in court.

8 Put differently, if you would hesitate to rely on
9 the testimony of the cooperators in this case concerning
10 important issues in your own lives, then you should not rely
11 upon them in this most important decision in Mr. Asaro's life.

12 So, for example, let's suppose that Gasper Valenti
13 knocked on your door and he said, good morning, juror number
14 three. Guess what? I have a job at a brokerage firm and I
15 would like to manage your retirement account. Would you let
16 him do that? Of course you wouldn't. None of you would.

17 Therefore, you shouldn't rely on him when deciding
18 Mr. Asaro's guilt or innocence. After all, by his own
19 admission, Gasper Valenti is an experienced liar.

20 He is a person who is able to lie to everyone around
21 him, everyone, including his family members for years. He did
22 it without any sort of detection, making everyone around him
23 believe he was the same old Gasper when indeed he was
24 recording the words of everyone that was closest to him.

25 So let's talk about the evidence in this case, the

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1 evidence that the government has preserved.

2 I am going to be putting some things on the
3 especially now. If you want to take your screen out?

4 (Continued on next page.)

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1 MS. MACEDONIO: (Continuing) First, you had to
2 listen to several days, several days of surveillance testimony
3 and the result are all of those charts that sit next to you,
4 dozens and dozens of charts. All of them contain photos of
5 men doing absolutely nothing wrong. The FBI spent thousands
6 of hours conducting surveillance. They photographed hundreds
7 of people. In total, you heard from 33, 33 surveillance
8 witnesses, a lot of them retired.

9 There was surveillance dating from the 1970s to
10 2013. Here are the names of some of the surveillance
11 witnesses you heard from: John Keenan, John Sheehan, James
12 Parker, all sorts of surveillance witnesses that came in,
13 Fernando Fernandez. A week of this. A week of pictures.
14 Agent Metts testified that for a period of time, all he did
15 was sit in a bank and take pictures of people walking in and
16 out of a building. John Carillo, his specialty was taking
17 picture of people arriving at and leaving public wakes.

18 Surveillance over decades and never once did they
19 photograph Mr. Asaro doing anything illegal. But what did you
20 get? There's Mr. Asaro, walking down the street with a coffee
21 pot in his hand. Yes, they got him. Presumably he's bringing
22 somebody a cup of coffee.

23 What else do you have? There he is. That's Vincent
24 Asaro talking to some random woman on the street. Apparently
25 Mr. Asaro was quite a popular guy. There he is being greeted

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1 by somebody with a kiss on the cheek.

2 And there he is with Gasper Valenti, the very man
3 that's recording him, recording his every move. And what is
4 he getting from Gasper Valenti? A kiss on the cheek.

5 This one is not so clear, but here he is at a deli
6 with Ronnie Giallanzo. Mr. Giallanzo has his four year old
7 son with him. They're leaving the deli after getting
8 something to eat.

9 Now, is it any wonder to you that after all this
10 time, after all this surveillance, that Mr. Asaro knew he was
11 being surveilled? He knew it. Of course he knew it. They
12 were like the paparazzi. They never went away. It had been
13 going on for decades. So when Eileen Roemer testified that
14 Mr. Asaro waived at her in January of 1989, that's really
15 surprising. He was constantly being surveilled but he didn't
16 run and he didn't hide. Instead, he sat out on the sidewalk
17 just like that: Smiling, talking to people who passed by in
18 front of a building with an open door and open windows.

19 You heard about surveillance, you heard surveillance
20 testimony about surveillance that was conducted on certain
21 nights because that's the night that organized crime members
22 had meetings. Really? Look at these photographs.

23 This is the secret society. All of these men are
24 having a big secret meeting and there they are talking to each
25 other, walking up and down the street, walking back and forth.

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1 That's the secret society. They came and went as they saw
2 fit. Does any of that make sense to you?

3 There are a few pictures, however, that the
4 government claims was when there was actually a Bonanno
5 meeting going on. And guess what? Mr. Asaro wasn't there.

6 This is the big FBI raid of the Bonanno social club.
7 The FBI goes in, they take some photographs and what do they
8 find? There's a group of men sitting around a table having a
9 meal and drinking Diet Pepsi. Another coup for the FBI.

10 The government claims that Mr. Asaro was captured on
11 surveillance shortly before this photo was taken. Do we have
12 that one? Clearly, he's not at the table when the FBI went
13 into the club. If there were a meeting of the secret society
14 and it was captured by the FBI and if Mr. Asaro was such an
15 important part of this society, why isn't he there? It's not
16 as if he knew the FBI was going to be joining him for dinner
17 and he opted out. He's not there because he wasn't a part of
18 it, plain and simple.

19 Now, in addition to photos of people, you also heard
20 testimony about the agents taking down plate numbers they saw
21 during their surveillance, all sorts of plate numbers. And as
22 pointed out during the cross-examination of Fernando
23 Fernandez, often he just took down plate numbers of people who
24 lived in Ozone Park while they were shopping in Ozone Park.

25 You also heard testimony about the surveillance of

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1 nine wakes and Special Agent John Carillo testified, well,
2 wakes, in particular, are very important. They're very
3 important tools for the investigation into organized crime.
4 It should be of no surprise to you that Mr. Asaro was at his
5 uncle Mickey's wake. It was of course his uncle. It should
6 also be of no surprise to you that Cathy Burke attended her
7 father's wake. It was her father. Mr. Asaro also went to
8 wakes of several other individuals of Italian-American
9 heritage, people he knew his entire life, family members,
10 folks from the neighborhood. What is the crime there? There
11 simply is none.

12 The government claims these wakes were important
13 Bonanno family and broader mafia events. That's absurd.
14 Surveillance photo after surveillance photo, trying to make it
15 appear as if something nefarious was going on at a public
16 wake.

17 You also heard a great deal of testimony about
18 social clubs, places where Mr. Asaro would frequent and play
19 cards. John Tagliaferro said it best. You remember John
20 Tagliaferro was the elderly man who came and testified. He
21 said, Well, we generally played cards. It's a game called
22 Ramino and that's how we passed the time. I went with my
23 next-door neighbor.

24 They play cards at the social clubs. Sometimes they
25 have food there. In the club across the street from the bank

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1 on 101st Avenue, Agent Metts told you there was a couch with a
2 pillow inside. It's not so clear on that shot.

3 The government asserted that only organized crime
4 people were allowed to enter these clubs. Well, what about
5 John Tagliaferro? He wasn't a member of organized crime. He
6 was a milkman. And you also heard testimony that on occasion,
7 there were women in the social clubs. Decades of surveillance
8 and this was the best they could give you.

9 The most damning picture was a picture of Mr. Asaro
10 with a bat in his hand, but if Mr. Asaro actually used that
11 bat, you would have heard testimony about that. You would
12 have heard that loud and clear. Instead, you heard testimony
13 about Mr. Asaro protecting the integrity of the women in the
14 neighborhood.

15 There was also surveillance of Mr. Asaro's fence
16 company, a legitimate company where trucks were coming and
17 going. That's a picture of Astro Fence Company. You also
18 heard testimony about his restaurant, The Great Im-pasta,
19 catchy name, a legitimate business that Mr. Asaro owned.
20 Then, of course, you had to hear surveillance testimony about
21 where Mr. Asaro's son worked. This case wouldn't be complete
22 if we didn't have this photograph. Again, a legitimate
23 business of a company that was clearly doing business.

24 In addition to surveillance, you also heard evidence
25 that related to phonebooks and phone records. The fact that

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1 Mr. Asaro's phone number appeared in certain phonebooks isn't
2 evidence of a crime. It's not a crime to have your name and
3 your phone number in somebody's phonebook, but the government
4 asserted during its summation that it was concrete proof.
5 Really, that's concrete proof? That's ridiculous. It simply
6 shows these people know each other and that's it. There were
7 hundreds of names in these books. Are all of these people
8 members of organized crime? It's just not practical.

9 Further, as Judge Ross will instruct you, there is
10 no such thing in this country as guilt by association. You
11 can't be convicted because of who you know. Did he speak to
12 certain people, people who the government asserts are members
13 of organized crime? Yes, he did. But without knowing the
14 content of these conversations, the records themselves are
15 meaningless. What's more, your job here is only to decide if
16 Mr. Asaro was acting in furtherance of the Bonanno crime
17 family. It's not to determine what anybody else was doing.
18 He's the only person on trial here.

19 The government also tried to make some leap with
20 regard to Mr. Asaro's contacts with his son but, again, you
21 were given limited information, limited data. There's no way
22 to tell if there were different phones that were being used,
23 what the conversations were or they weren't. I mean, what
24 difference did it make? They're father and son. They can
25 call each other whenever they want or never if they want.

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1 That's entirely up to them.

2 Other meaningless information you heard about was
3 wedding lists and confirmation records. Simply filler in an
4 effort to support and bolster the testimony of the
5 cooperators.

6 Now, the heart of this case is a racketeering
7 conspiracy. The indictment alleges that Mr. Asaro is a member
8 of the Bonanno crime family and that he was committing crimes
9 in furtherance of the Bonanno crime family. Indeed, to find
10 him guilty of the racketeering conspiracy, the government must
11 prove to twelve of you beyond a reasonable doubt that
12 Mr. Asaro knew and intended that his actions would have some
13 meaningful connection to the Bonanno crime family or that the
14 racketeering acts would benefit the Bonanno crime family. The
15 problem is the government simply has not established this.
16 They simply haven't established that Mr. Asaro's actions were
17 connected to the Bonanno crime family.

18 The most you can take away from the evidence in this
19 case is that Mr. Asaro operated with his own set of rules,
20 without regard to the rules of any group of people or any
21 organization.

22 Now, you heard a recording of Mr. Asaro complaining.
23 I'm going to get my badge taken away. I'm getting my badge
24 taken away. He seems to be frantic talking to Gasper Valenti
25 about this. What does this mean? What can you take away from

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1 this particular conversation? It means that everyone
2 understood that Vincent Asaro wasn't acting in furtherance of
3 the Bonanno crime family; that he did his own thing and he
4 never operated in a manner that would further the family.

5 The fact that Mr. Asaro continued to associate with
6 people who the government claims are members of organized
7 crime means nothing. Again, it's not a crime to associate
8 with people. That's not the crime he's charged with. In
9 fact, that's a theory that's repugnant in our nation.

10 The recordings made by Gasper Valenti made clear
11 that Mr. Asaro fought with everybody. He didn't just fight
12 with Gasper Valenti. For example, you heard testimony of
13 Mr. Asaro stating that people in Skinny Dom's place hate him.
14 They hate him because he doesn't pay his dues. He's not
15 following their rules.

16 You also heard a recording in which Mr. Asaro
17 stated, The old man -- referring to himself -- the old man
18 takes care of himself. You also learned that Mr. Asaro took
19 out loans, loans from people like Mike Padavona knowing that
20 he was never going to pay them back. That's not operating in
21 furtherance of the Bonanno crime family. That's operating in
22 furtherance of Vincent Asaro. You heard him say, They think
23 they're using me. I'm using them. All of his actions were
24 without regard to the rules. He did things behind everyone's
25 back and he told Gasper Valenti not to say a word.

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1 For example, he got money from Bam. You heard a lot
2 about Bam. His name is Robert Cotrone. And he told Valenti
3 don't say anything to Jerry. He told Glen to keep his
4 actions, meaning Mr. Asaro's actions, on the down low, don't
5 tell anybody, don't tell anybody what I'm up to. The reason
6 for this is because he always has and he always will do his
7 own thing. Vincent Asaro has never taken direction from
8 anyone.

9 And look at how the other people in the Bonanno
10 crime family, or at least the members, the people that the
11 government claims are members of the Bonanno crime family
12 treated Mr. Asaro. And with Bonventre, he asked him for
13 money, Mr. Asaro asked him for money. The answer was no.
14 Jack Bonventre, he refused to give him money. And even his
15 own son Jerry, Jerry wouldn't give him any money and that was
16 money that the government asserted was money that belonged to
17 the Bonanno crime family. And when he went and asked for a
18 loan, you know what he was told? Get lost, you're not getting
19 anything. And that's what resulted in all of that harsh talk
20 that you heard with Mr. Asaro complaining about his son.

21 Take a look at the way Mr. Asaro treated the person
22 who was alleged to be the boss of the Bonanno crime family,
23 Thomas DiFiore. All he did with Thomas DiFiore is fight with
24 him. That was the man, the government claimed, who was the
25 boss at the time. Mr. Asaro refused to give DiFiore money

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1 that, according to the rules, should have gone to him. This
2 is a prime example of how Vincent Asaro's actions were not in
3 furtherance of the Bonanno crime family. You heard from when
4 Sal Vitale sat in that witness stand that the boss is God. He
5 said it over and over again. The boss is God. The boss is
6 God. The boss is God. Well, I'll tell you what, if the boss
7 is God, he's practicing a different religion.

8 Now, there was some testimony about Mr. Asaro being
9 put out of commission but there was never any evidence that he
10 actually was on such a commission. For example, there's a
11 recording in which Mr. Asaro related that a murder had
12 happened in Canada and when Gasper Valenti pressed him for the
13 details, do you know what he shot back? He says, Canada, I
14 don't even know what's going on in Ozone Park, how the heck do
15 I know what's going on in Canada. Does that sound like
16 somebody who's really in the know?

17 Then there were conversations where people clearly
18 expressed that they just didn't want him around. Jack
19 Bonventre explained that he didn't want Mr. Asaro coming in
20 his shop shooting things from 40 years ago. Mr. Asaro
21 complained that there were guys raising their hands to him and
22 that nothing was being done about it. Hardly the powerful,
23 organized crime figure that the government alleges him to be.
24 Rather, what you heard was that Vincent Asaro rolled around
25 all day with Gasper Valenti fantasizing about things,

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1 fantasizing about ways that they might make money.

2 He even told Gasper, I don't come out anymore.

3 Where am I going to go? You know, it's kind of like nobody
4 wants me around so I, I don't come out anymore. And then he
5 also talked about getting some money. You know what for? So
6 he and Gasper could go fishing.

7 Interestingly enough, you heard a lot of testimony
8 about the arrest of Nicholas Santora and that was in January
9 of 2012 and the government alleged that at some point,
10 Mr. Asaro was recording Mr. Santora and the agents in this
11 case got on the stand and they said that Mr. Santora had been
12 arrested with a group of people after a long-term
13 investigation into the Bonanno crime family. Now, if that was
14 true, why wasn't Mr. Asaro arrested until 2014? I mean,
15 Gasper had been cooperating since 2008. There it was, 2012,
16 long term investigation into the Bonanno crime family, is he
17 arrested? Nope.

18 Let's take some time to discuss the cooperators in
19 this case. First of all, the government has spent hundreds of
20 thousands, if not millions of dollars on the cooperators that
21 testified in this case. Government money going to career
22 criminals responsible for dozens and dozens of deaths,
23 assaults, drug sales, extortions and the list goes on and on.
24 Every single one of these cooperators has been released from
25 jail. They're on the street and they're free to do whatever

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1 they want. They negotiate sweetheart deals and then they reap
2 the benefits.

3 Now, the government got up here in summations and
4 said it's not whether or not you like them, it's whether you
5 believe them. The fact is they're despicable people and
6 they're all very accomplished liars. They make careers out of
7 lying to people. How can you believe them? Let's talk about
8 Gasper Valenti first, the star witness.

9 First, you should know that when Gasper Valenti
10 decided to cooperate, cooperation wasn't a new concept. It
11 wasn't as if he just created it. Cooperation has been around
12 for a long time and he knew what he was getting himself into.
13 There were scores and scores of organized crime figures who
14 had cooperated with the government and ended up with, you
15 know, deals where they had killed dozens of people and then
16 ended up on the street. In fact, the government has become
17 the pension plan for organized crime figures. When you're
18 down and out, yes, the FBI will always take you and support
19 you.

20 Here's Gasper Valenti's motto in life: The more you
21 tell them things, you make up stories, you know, they'll give
22 you more money. That's pretty telling, isn't it?

23 He actually continues. He's talking about lying to
24 an FBI agent and he says I made up this story to show them I
25 was deeply involved in organized crime. He was puffing

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1 himself. Gasper Valenti had years to work out the terms of
2 his cooperation. He had thought about it for years before he
3 went in. He was a degenerate gambler who had absolutely
4 nothing to lose. He knew before he went in, the story he was
5 going to tell or the stories, I should say, he was going to
6 tell.

7 He also knew that because he was discussing crimes
8 that were decades old, that nearly everybody that was involved
9 in them had passed. Jimmy Burke passed. Mickey Zaffarano,
10 gone. Dominick Cataldo, gone. Junior Berger, passed. Jimmy
11 Santos, no longer with us. Tommy DeSimone, passed. Angelo
12 Sepe, Anthony Spero, Jerome Asaro, Mr. Asaro's father, Paul
13 Vario, all of them, all of them had passed long before Gasper
14 Valenti went in and talked about Mr. Asaro. So when he went
15 into the FBI, he had a well thought-out plan, but before he
16 started to provide too many details, he told them that he had
17 to be paid for his information. In fact, he told them that
18 when he first went in. And before he made a single recording,
19 not one, he started getting \$3,000 a month from the Federal
20 Government.

21 Then for two years, he produced absolutely nothing,
22 but every month he was getting that \$3,000 check and he
23 conceded it paid for all of his expenses. Of course, on top
24 of that, he was collecting Social Security and food stamps,
25 but we won't even go there.

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1 At first, he was trying to set up his cousin, Tommy
2 Ferreri in Las Vegas and made a series of phone calls for a
3 year, all year. What did they talk about? Baby seals, what's
4 the weather like, nothing. It's nothing. But when that
5 didn't work out, he went to Sandro Aiosa and Jack Bonventre.
6 Nobody was interesting in dealing with Gasper Valenti. He was
7 far, far from the earner that he thought himself to be when he
8 sat in that witness stand. And then finally, two years after
9 he began cooperating, he made a recording with Mr. Asaro.

10 Now, Gasper Valenti maintained throughout his
11 testimony that he did this for his family. He maintained the
12 money wasn't for me, it was for my family. That's ridiculous.
13 You heard his history and when he starts cooperating, his wife
14 is not even living with him. This is all about him. He told
15 you from the witness stand that he hasn't spoken to his family
16 in years. This has nothing to do with Gasper Valenti's
17 family.

18 Gasper Valenti has never spent a single day in jail
19 and despite his testimony, you can be sure he doesn't expect
20 to. Gasper told you over and over again that he lied when it
21 came to money. And he also told you that if he had money, he
22 wouldn't be in this courtroom. It was always all about the
23 money. I was asking him questions about prizefighters and if
24 he had prize fighters in Vegas and then he blurted out, Well,
25 if I had two prizefighters, I wouldn't be here. Does that

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1 sound like a guy who has remorse? That's what he told you. I
2 was feeling so bad about the things I had done and needed to
3 do this for my family, but if he had two prizefighters in
4 Vegas, you wouldn't have never heard from him.

5 So, is it any kind of stretch to think that Gasper
6 Valenti couldn't sit on that stand a couple of days and lie to
7 you? No, not at all. He did it for years. It was his whole
8 life. Think about Gasper's standard method of operation. He
9 used it over and over again: Use up all your chips, play out
10 all your cards, borrow money from anybody when they give it to
11 you, and then just leave, leave and recreate yourself.

12 In the mid '80s, after borrowing money from anybody
13 here in New York who would give it to him, he took off for
14 Vegas and Gasper, the family man, oh, he left his wife and
15 kids behind. And when I say borrowed money, I'm using that
16 term very liberally. He was stealing the money. He never
17 worked. He had no way to pay these people back. He told them
18 it was a loan and then he would gamble the money away and took
19 off to Vegas, of all places, because that's where you go if
20 you had a gambling problem so he wouldn't have to pay him
21 back.

22 He came back to New York, back from Vegas the first
23 time, and what did he do? He made his mother take a mortgage
24 out on her house. And then he claims he did the gold score
25 because he was going to pay back all of his debts but, of

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1 course, he didn't. And although he claimed that originally he
2 left New York because he was afraid of Mr. Asaro, when he came
3 back, he was welcomed with open arms. So which one was it?

4 Then in 1990, again, owing everyone money, he took
5 off for Vegas once again, leaving his wife and children
6 behind, but this time, his plan, you know, you have to delve a
7 little bit with Gasper. It wasn't just getting on a plane.
8 He knew he had to figure something out. So his thought
9 process was developing. So when he got to Vegas this time, he
10 had a story and he had a story about killing two people.
11 Remember this story that he had devised, it was he, you know,
12 inadvertently got involved in a drug deal and there was two
13 people shot and killed and he had to burn the car and that's
14 why he was out in Vegas and he was able to convince everyone
15 around him that that was true. He stuck to his story. He was
16 living a lie and everybody around him believed it. That's how
17 convincing he was. His story was so good that he convinced an
18 FBI agent that he was a big time wise guy. Sound familiar?

19 Then, he had the nerve to testify that after a
20 lifetime of crime here in New York, when he arrived in Las
21 Vegas, he wasn't going to commit any crimes but he was enticed
22 to. He was enticed to because the money was so easy. Really?

23 (Continued on next page.)
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Summation - Macedonio

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1 SUMMATION

2 BY MS. MACEDONIO: (Continuing)

3 MS. MACEDONIO: Really? Was he enticed to hit that
4 man in the face with a brick so he could take his wallet? Was
5 he enticed when he was cashing in fraudulent chips? How about
6 when he was dealing in stolen credit cards or promoting
7 prostitution? Was all of that because the FBI enticed him to
8 do it? While he was there, he even managed to lie in a court
9 proceeding.

10 Now, the agent's notes are pretty clear on this and
11 although Mr. Valenti testified here in court that he didn't
12 lie, take a look at this chart.

13 My question to him: Did you tell the agents that
14 you lied in court?

15 ANSWER: I didn't lie.

16 QUESTION: So, you didn't tell the agents that?

17 ANSWER: That I lied? No.

18 Now, when Special Agent Mininni was on the stand I
19 asked him some questions about his notes that he carefully
20 took down when he was interviewing Gasper Valenti.

21 QUESTION: Then what did it say down here, the
22 highlighted part?

23 ANSWER: CW, meaning Gasper Valenti, lied in court
24 and tried to help midge Defense.

25 There's a big difference there. Big difference.

Summation - Macedonio

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1 You can't make that up. He lied in court, originally in Vegas
2 and then came in here and lied to you about it again.

3 In or about 2005 it was time for Gasper Valenti to
4 re-create himself once again. He had used up all his chips in
5 Vegas, laid out all his cards, so he came back to New York.
6 Now, originally, he left New York and he left his wife and
7 kids behind.

8 This time he comes back with a new family, a new
9 baby, and leaving another trail of people behind in Vegas --
10 of course, he owed them all money -- Gasper arrived in
11 New York already thinking about his retirement plan with the
12 FBI and soon thereafter, he began meeting with the FBI and
13 receiving \$3,000 a month. He had yet again re-created himself
14 and all those loans that he took out in Vegas, all the loans
15 that he took out everywhere, he didn't have to worry about
16 paying them back anymore. Gone.

17 Imagine if you could live your life like Gasper
18 Valenti. Just keep re-creating yourself, with layer after
19 layer of lies and then, you can have all of your living
20 expenses taken care of.

21 With regard to Mr. Asaro, Gasper Valenti claimed
22 that every crime he committed in New York, every single crime
23 he committed was with Mr. Asaro. And he claimed, despite the
24 fact that he just lived a life of crime, he never really had a
25 job, that he never received any of the money. Is that

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1 practical? You spend every day of your life committing crimes
2 and every dime you make you give to someone else? Or is this
3 just a guy who's piling it on, piling it on? You know,
4 Mr. Asaro told me to do it. Mr. Asaro told me to do it.

5 Everything is Mr. Asaro. Time after time Gasper
6 Valenti just threw Mr. Asaro's name into the mix by saying he
7 approved the crimes that Gasper was committing. That Vincent
8 Asaro authorized Gasper Valenti's life of crime. In any way
9 that Gasper Valenti could involve Vincent Asaro, he did.
10 After all, if he was not cooperating against Vincent Asaro,
11 what else do he have?

12 There is one thing that you learned about
13 cooperation and that it's that you have to provide substantial
14 assistance. In other words, you can't just go in there and
15 talk, you have to put some point on the board. So, Gasper
16 Valenti rode around for years trying to get Vinny Asaro to
17 commit a crime. And it didn't happen. Even when the FBI made
18 up stories about Joker-Poker machines and they have Gasper
19 Valenti saying oh, I've got a guy in Jersey, I've got a guy in
20 Vegas, I've got these machines. Nothing ever happens.
21 Nothing. Nothing ever happens. They even give him TVs and
22 electronic equipment to give away hoping that he can conjure
23 up some people. Nothing ever happens. They just give
24 Mr. Asaro a TV.

25 Gasper Valenti spent years recording people and he

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1 was able to turn that recording device on and off by himself.
2 And what did that mean? It means that he was able to capture
3 what he wanted to and able to eliminate what he didn't want
4 captured. He came up with nothing. Let's look at what you
5 can take away from the recordings.

6 First, Mr. Asaro has a temper. We've all heard it.
7 But as quickly as his temper erupts, it flames out. They even
8 joke about it. There's one conversation where I think it's
9 Mr. Asaro and Gasper Valenti and Danny Rizzo and Mr. Asaro
10 says something to the effect of oh, I'm wonderful. And Danny
11 Rizzo says oh, yeah, it flows from you. They're laughing at
12 him. They're joking around. Everybody understands he has a
13 temper. But again, as quickly as it's on, it's off. In one
14 ear and out the other.

15 You heard Mr. Asaro yelling at Gasper Valenti. They
16 were cousins, they had spent their whole life together. But
17 you also heard really nice things that Mr. Asaro did for
18 Mr. Valenti. I cross-examined Mr. Valenti about a ring that
19 Mr. Asaro had made for him. It was a custom-made ring that
20 was a replica of cufflinks that Mr. Asaro's father had and
21 when Mr. Asaro's father died, he took it upon himself to have
22 a ring made so that Gasper Valenti could have that memory;
23 that memory of his father, Gasper Valenti's uncle. What did
24 Gasper Valenti tell you he did with that ring? He hocked it.
25 Almost immediately.

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1 When Mr. Asaro's father died, Gasper Valenti was
2 given the elder Mr. Asaro's car. That's a nice tribute;
3 right? He didn't have a car, they gave him a car. What did
4 he do? Never made a single payment. Lost the car.

5 Despite the harsh words you hear Mr. Asaro using
6 when he speaks to Gasper Valenti, there are also several
7 recordings where you can hear them expressing their love for
8 one another. They openly say it. You hear him say Ga, I love
9 you Ga. That's what he calls him, Ga. I love you, too. What
10 they talk about, it's more than love, it's family. They have
11 a deep affection for each other. But only what Mr. Asaro
12 didn't understand was, it was only going one way.

13 He tells him constantly, be careful. Stay out of
14 trouble. You can hear Gasper coughing and Mr. Asaro is saying
15 things like go ahead, keep smoking. He cared for him. And in
16 their moments of time alone, Mr. Asaro constantly confronted
17 Gasper Valenti about being a liar. Although Mr. Asaro clearly
18 didn't appreciate the extent of Gasper's lies, he knew that
19 Gasper was a liar at heart and that's a personality trait that
20 doesn't change. If you're a liar, you're a liar.

21 You also heard a great deal of stress over money.
22 Mr. Asaro was constantly complaining that he was broke. That
23 he had borrowed money from everyone and was in danger of
24 losing his jewelry. At one point Gasper Valenti was coaching
25 Mr. Asaro on how to get the maximum benefits from Social

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1 Security. It's interesting because the Government claimed
2 that the higher-ups in the Bonanno crime family, those people
3 who are captains or on a commission or whatever, they didn't
4 have to do any dirty work. People just came to them and gave
5 them money. Is that what you heard on those tapes? Is that
6 what you heard about this man? This man who they were
7 claiming was so powerful.

8 Another constant thing was Gasper Valenti trying to
9 coax Mr. Asaro into committing a crime. Gasper stated over
10 and over and over again, I need to earn, I have to earn, I
11 have to earn, how we going to earn, let's earn. He baited
12 Mr. Asaro with lines that the FBI gave him, but to no avail.

13 It's clear from the recordings that there was a
14 certain lack of respect for Mr. Asaro. He was complaining
15 that people were putting their hands up to him, nothing was
16 being done about it. That Bam or Robert Catrone told
17 Mr. Asaro he wasn't even allowed on the block. And even the
18 truck drivers, remember that phone call? He seemed to be very
19 irate, he's yelling at the truck drivers because they were
20 blocking the car wash. He's screaming at them, tell them
21 Vinny Asaro lives here. What did the truck drivers do?
22 They're like, yeah, okay buddy, you're the one yelling.
23 Nothing ever happens.

24 Can you imagine yourself spending years of your life
25 sitting in a car with your cousin, just trying to set him up,

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1 just riding around trying to set him up with a crime so that
2 you could collect money? That really takes a certain type of
3 individual. And if you think that Gasper Valenti wasn't
4 capable of getting on that stand and lying to you after lying
5 for years to this man who was so close to him, this man who
6 loved him, I submit that you're wrong.

7 Gasper Valenti spent hundreds of hours recording
8 Vincent Asaro. And then he spent hundreds of hours with the
9 Government perfecting his story. Once again, Gasper Valenti
10 has re-created himself, this time as a Government cooperator
11 who now has an FBI pension plan. But Gasper Valenti is no
12 more believable now than he was before he became a Government
13 cooperator and his testimony should be flatly rejected.

14 So, now let's talk about what I call the window
15 dressing cooperators. The one thing the cooperators uniformly
16 said was the fact that the Bonanno crime family had no rules.
17 Excuse me -- the fact that despite the fact that the Bonanno
18 crime family had rules, no one paid any attention to them. No
19 one followed the rules from the boss on down.

20 Can you put up Sal Vitale.

21 MS. FERRONE: Sure.

22 MS. MACEDONIO: That's "Good-Looking Sal." Not
23 quite sure where he got that name from but that's Good-Looking
24 Sal. Good Looking Sal pled guilty to eleven murders and he
25 was responsible for many, many more. He testified in numerous

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1 proceedings, including against his brother-in-law. Vitale
2 made millions of dollars as a criminal. Millions of dollars.
3 And he was allowed to keep a significant amount of it. He was
4 involved in all sorts of extortions, murder, and he was a big
5 money man. But one of the things that was very interesting
6 was that Sal Vitale was the first witness for the Government
7 and he was clearly, clearly annoyed that he had to be here.
8 That's really kind of surprising since he had recently been
9 given a \$250,000 check for his continued cooperation. This
10 was in addition to the \$900,000 that he got to keep and the
11 hundreds of thousands of dollars that they spent on him.

12 Now, look at what he said about authorizing the
13 death of a young kid. Me and Anthony Spero could care less
14 what was going on in Pete Rosa's life with his nephew. I
15 never met the kid. Don't know the kid.

16 Now, that statement was taken in context to his
17 authorization to kill the kid. He just didn't care. It
18 doesn't make a difference to me, kill him if you want. Sal
19 Vitale was and is a callous and calculated killer. He killed
20 his friends and he killed his associates. It didn't matter to
21 him. His status as a Government cooperator doesn't change
22 those facts.

23 But Good Looking Sal, oh, he constantly tried to
24 assert that he had no choice but to kill these people. Come
25 on, ladies and gentlemen, does that really sound like somebody

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1 who's accepted responsibility for his actions? He always had
2 a choice, but it wasn't until he knew he was going to spend
3 the rest of his life in jail that he decided to take a
4 different path. It was at this point that he, too, elected to
5 take out the FBI pension plan.

6 He told you there was no way out but to kill. Well,
7 he found a way out. He found it. And he's been paid
8 handsomely for it. And what did he add to this case? Well,
9 he told you about the rules, told you about the rules of the
10 Bonnano crime family and how everybody broke them. And he
11 told you about how everybody from the boss on down lied all
12 day long. In fact, he went so far to say that Joe Massino was
13 a capable liar.

14 Sal Vitale, too, was a capable liar. He lied
15 repeatedly to law enforcement, from little things like alcohol
16 problems to much bigger things, like making sure no one
17 discovered Joe Massino when he was on the lam. And Sal Vitale
18 was very resourceful. He was a man who knew how to create
19 intricate plans and then lay in wait to execute them. And in
20 Sal Vitale's world, everybody's expendable. From your family
21 on down.

22 He had no relationship with Vinny Asaro. He had no
23 problem coming in here and testifying for a day. If it's
24 going keep that money coming, sign me up. Sal Vitale began
25 cooperating in 2003. If his information about Mr. Asaro was

1 so reliable, how come he's not arrested until 2014,
2 eleven years later. Like the rest of the cooperators, Sal
3 Vitale's testimony should be rejected as it was bought and
4 paid for by the FBI.

5 The next cooperator you have is Peter Zuccaro. You
6 must remember Peter Zuccaro. He was eager and excited to tell
7 you all about his criminal ventures. He testified in
8 multiple proceedings. Peter Zuccaro, he didn't stalk his
9 murder victims, that would have been creepy. He clocked them
10 instead.

11 What does he tell us? Well, about cooperation he
12 says: Self-preservation. I couldn't have put it any better
13 myself. Wow, that's what cooperation is about.

14 And when you're talking about The Mob he says, and
15 then I think greed, greed pretty much took over. That was a
16 statement about the Mob in general. Really nobody's acting on
17 behalf of any organized crime family, it's all about greed.
18 And, of course, he tells you like Vitale, everybody broke the
19 rules.

20 Zuccaro conspired to and did kill people. He hunted
21 down a man and killed him in his driveway because of an
22 insult. Left him there for his family to find him. He shot
23 another man and killed him while he was hiding under a pool
24 table in a public place. He planned and executed these
25 murders without hesitation.

1 Then, when Peter Zuccaro was facing a 24-year
2 mandatory minimum sentence, he opted out. Now, he claimed it
3 was because he wasn't getting any respect, but is that even
4 remotely believable? Peter Zuccaro was a heroin addict who
5 participated firsthand in beatings, murders and kidnappings.
6 He was usually armed with two guns while he walked around the
7 neighborhood high on heroin and he employed his own form of
8 justice, beating people when he saw fit, killing them or
9 attempting to kill them, with his own sense of right and
10 wrong.

11 You know Zuccaro is a capable liar and you know that
12 he's capable of getting in that box, holding up his hand and
13 taking the oath and then lying to the jurors because he told
14 you he had done it before. He told you he had done it before.
15 He told you specifically that he had done it in John Gotti's
16 trial. And why did he do it in that trial? Because it
17 benefitted him, why else. Same is true here. A cold and
18 calculated criminal, Zuccaro only added decades-old
19 information about Lufthansa, reportedly relayed to him by his
20 dead friend Frank Burke. So, he himself had no firsthand
21 knowledge.

22 Now, Sal Vitale began cooperating in 2003. Peter
23 Zuccaro in 2005. And still, he's not arrested until 2014.
24 What does that tell you? That their information is either not
25 reliable or it was only recently conjured up. Like the rest

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1 of the cooperators, Peter Zuccaro's testimony should be
2 rejected as it was bought and paid for by the FBI.

3 Let's look at Anthony Ruggiano. What do we know
4 about Anthony Ruggiano. Like Vitale and Zuccaro, he's a
5 career criminal who devoted himself to a life of crime. He is
6 a murderer who is capable of anything. And like Vitale and
7 Zuccaro, Ruggiano had testified in multiple proceedings before
8 his testimony in this case. They're good at it. They know
9 how to do it. It's not hard for them. They've done it over
10 and over and over again.

11 So what, does he say? And he's talking about
12 killing his brother-in-law. He says the plan was to wait for
13 the christening and then kill him, because we didn't want to
14 mess up the christening. Now, this is his sister's husband.
15 The father of her child. And this is the rationale he gave
16 you with regard to his brother-in-law's death.

17 And after he killed his brother-in-law, he let his
18 sister hook for her dead husband for years. For years. How
19 do you know you can't trust Anthony Ruggiano? Because guess
20 what? His brother-in-law trusted him and that's what got him
21 killed. This is a question that was posed to Anthony
22 Ruggiano. Why were you the person who had the role of getting
23 your brother-in-law to the club? That was the club where he
24 was executed. And his answer? Because he trusted me.

25 Anthony Ruggiano is a career criminal who went so

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1 low as to hock his son's jewelry and steal money from his
2 grandmother's funeral to support his drug habit. After being
3 arrested close to 20 times, Ruggiano negotiated a deal with
4 the Government when he was facing life in prison. In
5 exchange, he didn't have to forfeit any money, he got to keep
6 his house, and the marshals gave him a car.

7 And now, 35 years after Lufthansa, Ruggiano came
8 into this courtroom to offer testimony about the heist.
9 What's curious about that? Well, Ruggiano's been cooperating
10 since 2006. So, let's recap.

11 You have Sal Vitale in 2003. Peter Zuccaro 2005.
12 Anthony Ruggiano 2006. Gasper Valenti 2008. Nicholas Santora
13 arrested 2012 and still, Mr. Asaro's not arrested until 2014.
14 Again, their information's either not reliable or it's
15 recently conjured up. Therefore, all of the testimony
16 regarding Vincent Asaro should be flatly rejected.

17 Now, let's turn to the specific Racketeering Acts
18 charged in the indictment.

19 Judge, work this be a good time to break?

20 THE COURT: If you would like.

21 MS. MACEDONIO: Okay, thank you.

22 THE COURT: Short break. Five minutes.

23 THE COURTROOM DEPUTY: All rise.

24 (Jury exits.)

25 (In open court; outside the presence of the jury.)

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1 MS. ARGENTIERI: Judge?

2 THE COURT: Yes.

3 MS. ARGENTIERI: I didn't want to interrupt during
4 Ms. Macedonio's summation, but I would like to see what
5 slides, what these Exhibits are that they're showing the jury
6 because some of these things aren't in evidence. For example,
7 they put up a picture of Peter Zuccaro. We didn't introduce
8 it at trial, there's no evidence that that's actually a
9 picture of Peter Zuccaro and I would just like to see sort of
10 what the rest of everything else is.

11 MS. MACEDONIO: Absolutely.

12 (Recess taken.) (In open court.)

13 (Judge ALLYNE R. ROSS enters the courtroom.)

14 THE COURT: We can get the jury.

15 (Jury enters.)

16 THE COURT: Please, be seated.

17 Ms. Macedonio.

18 MS. MACEDONIO: Thank you, Judge.

19 SUMMATION

20 BY MS. MACEDONIO: (Continuing)

21 MS. MACEDONIO: I'd like to turn your attention to
22 the specific Racketeering Acts that are charged in the
23 indictment and I'm going to start with the murder of Paul
24 Katz.

25 It's clear that Mr. Katz's remains were found in the

1 basement of his home, but what's entirely unclear is who
2 killed him and why.

3 Now, Mr. Asaro is charged in several ways with this
4 count. He's charged as conspiring to kill Mr. Katz, he's
5 charged with Katz's actual murder and he's charged as an
6 accessory after the fact. In order to convict Mr. Asaro of
7 Mr. Katz's actual homicides you have to believe Gasper Valenti
8 100 percent. And that's because there's absolutely no other
9 evidence that Mr. Asaro was involved in Mr. Katz's homicide.

10 The Government asserts that Katz was killed because
11 it was believed that Katz was cooperating and therefore, Katz
12 was responsible for Mr. Asaro's arrest on November 12th, 1969.
13 The Government claims that Mr. Asaro was in a warehouse that
14 was associated with Katz, but we didn't hear anything about
15 that warehouse from anybody else other than Gasper Valenti.
16 Not even Katz's son.

17 Now, you don't have anyone at all who's able to
18 support Gasper Valenti's story and that's because prior to
19 Gasper Valenti's cooperation, all of the people that he claims
20 were involved in this homicide had passed away. Jimmy Burke,
21 Joe Allegro, Paul Vario, Jerome Asaro. So, he knew he could
22 tell whatever story he wanted. He was free to say whatever he
23 wanted.

24 Let's talk a little bit about that we know about
25 Paul Katz. Here's what we know. Katz was arrested during an

1 armed hi-jacking and kidnapping along with four other
2 individuals. One of them was Joe Allegro. They were arrested
3 on October 17th of 1969. According to Lawrence Katz, Mr. Katz
4 did indeed start speaking with the police, at least over the
5 telephone and then, on December 6th of 1969, Katz left his
6 home and told his wife he was going to meet with Joe Allegro,
7 his co-defendant, and he was never seen again.

8 This is Defendant's Exhibit J in evidence, which is
9 the missing person's report that Mrs. Katz filed with regard
10 to Paul Katz. It shows you that Mrs. Katz told the police
11 that her husband had left to go meet Joe Allegro, who was one
12 of the five people arrested with Mr. Katz.

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14 (Continued on following page.)
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1 (Continuing)

2 MR. MADIGAN: This document shows that at the time
3 of his disappearance, Paul Katz was a truck driver. The
4 government chose to rely upon Lawrence Katz's birth
5 certificate, which was issued some five years earlier in
6 trying to establish to you that Paul Katz was a warehouseman.

7 Now, Gasper Valenti claims that Vincent Asaro told
8 him: Jimmy Burke and I killed Katz because he was
9 cooperating. That's the only evidence you have that Mr. Asaro
10 participated in Mr. Katz's death. So now let's take a look at
11 Gasper Valenti's story.

12 Gasper claims that Vincent Asaro called him and
13 said: I need a place to meet privately with Jimmy Burke, and
14 that Gasper had access to homes that his father had been
15 building and that his father had died in September of 1969 and
16 at the time of his father's death that these homes were
17 95 percent complete.

18 Okay, so what's wrong with the picture? Let's take
19 a deeper look into Gasper Valenti's details. If the homes
20 were 95 percent complete in September of 1969, then why was
21 this Certificate of Occupancy not issued until March of 1970,
22 nearly six months later? For homes that they had to sell.
23 Homes that Gasper claims he, himself, was showing to
24 prospective purchasers. It doesn't make sense. It doesn't
25 add up. Gasper claims he was responsible for showing these

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1 homes to prospective buyers, yet he claims he made this home
2 available on a Sunday, prime time for showing homes to
3 purchasers, and that he didn't let anybody in the house all
4 day long and that, indeed, nobody even tried to get into the
5 house. Doesn't make sense.

6 Katz left his home going to see Joe Allegro, a man
7 he had been indicted with. There is no evidence that Vincent
8 Asaro even knew Joe Allegro, never mind that he conspired with
9 Joe Allegro to lure Katz out of his home and kill him. Also,
10 take a look at how Gasper Valenti changed his story with
11 regard to the statement, Vincent Asaro's statement about the
12 homicide.

13 Can do we have that?

14 MS. FERRONE: I'm sorry.

15 MS. MACEDONIO: No.

16 During his testimony Gasper asserted the following:

17 He says that when he and Mr. Asaro were driving to
18 get a truck, that Mr. Asaro just blurted out: Jimmy Burke and
19 I killed Katz. That he just blurted out the name Paul Katz.
20 However, when he was debriefed on this issue, the notes from
21 Agent Mininni, that Agent Mininni took made it very clear
22 Gasper was sent to go get the truck, not that Vincent Asaro
23 ever went with him. This is a major change because it's that
24 ride that Gasper -- it's during that ride that Gasper Valenti
25 claims that Mr. Asaro told him that he had murdered someone,

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1 but that's not what he told the agents. That's not what he
2 told the agents.

3 So just to be clear, the only evidence you have that
4 Vincent Asaro participated in the actual homicide of Katz is
5 that statement, that statement by Gasper Valenti that has
6 changed. And while we're very sympathetic to the Katz family,
7 they don't have any idea who killed Paul Katz. After the
8 burial Gasper Valenti claims he was given an apology, an
9 apology from his uncle, his Uncle Jerome, Vincent's father.
10 This is the same tough guy uncle the government claims brought
11 Gasper Valenti into the life, a life that Gasper Valenti was
12 already participating in. They described the Bonanno crime
13 family, and particularly the Asaros as long-term members.
14 People who would do anything, kill, steal, rob. And Gasper
15 Valenti, he gets an apology from Jerome Asaro? Is this just a
16 way for him to distance himself from this?

17 With regard to Vincent Asaro being an accessory
18 after-the-fact, including the moving of the body; again, all
19 you have to go on is Gasper Valenti. Gasper Valenti testified
20 that after he and Jerry Asaro removed Katz's remains, that the
21 remains were to be put in paint cans and taken to an upstate
22 property owned by Jerry Asaro and Frank Lapetina. That's it.
23 That's all you have. Well, the government knows if there's a
24 property or not. They're certainly capable of getting a
25 search warrant. Where is that evidence? You don't have it.

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1 So all you have is Gasper. Now, clearly Gasper Valenti takes
2 the FBI to the body of Paul Katz, but whether or not he
3 participated in it, how he learned that information is
4 anybody's guess. For all we know he was there and he hid the
5 body with Joe Allegro.

6 Let's take a look at the tape that the government
7 claims is all telling. So this is the final tape that Gasper
8 Valenti makes, and during the course of this day he had called
9 Mr. Valenti several times: I have to meet with you. I have
10 to meet with you. This is the day that the FBI is going to do
11 the search for Paul Katz's remains. And finally they meet up,
12 and since I can't see it up there, I have to come over here,
13 and so Gasper gets -- you saw the video surveillance, Gasper
14 actually gets into Mr. Asaro's car and they start talking.
15 Gasper immediately says: The Feds are all over Liberty
16 Avenue.

17 And Asaro says: For what?

18 He says: By, you know?

19 He says: Bam?

20 Yeah.

21 For what?

22 I don't know.

23 How do you know?

24 I just came from my doctor there, Valenti says.

25 Asaro who has absolutely no idea what Gasper is

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1 talking about says: Who are they looking for? John there?

2 And he says: I'm talking about Liberty Avenue

3 where --

4 And then there's a silence. And according to the
5 transcript, Asaro puts his car in park and sighs. Now, the
6 government claims at this moment Vincent Asaro realizes that
7 this crime that he committed all these decades ago is about to
8 be unearthed.

9 Let's finish the conversation.

10 He says: You know what I mean?

11 And Asaro says: No, I don't know what you mean.

12 All right, let me go. Go ahead.

13 Valenti says: Where do you want me to go? What
14 should I do?

15 He says: What should you do?

16 Valenti says: Nothing.

17 And Asaro says: What can you do?

18 Now, there is no conversation here where Valenti is
19 saying to Mr. Asaro, what are we gonna do? What are we gonna
20 do next, Vin? Instead he said: What should I do?

21 He says, I don't know, what can you do?

22 What's done is done. He's essentially telling
23 Gasper, you know, you're in trouble, but it has nothing to do
24 with me.

25 And then knowing that Mr. Asaro has been followed

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1 for years, he knows about surveillance, what does he say to
2 Gasper? Don't call me.

3 And why does he say that? He says, you're in a heap
4 of trouble, don't be calling me anymore. And that's it, but
5 there's not one reference to: Vin, what are we gonna do?
6 Gasper simply says to him: What am I gonna do? What should I
7 do?

8 He says: I don't know what to tell you.

9 The government claims that at this very moment they
10 can read Mr. Asaro's mind, that at this moment he understood,
11 he knew Gasper was cooperating. Really? Did he yell at him?
12 I mean we know Mr. Asaro is capable of yelling, right? Did he
13 yell at the guy? Did he smack the guy? Did he tell him off?
14 Did he curse at him? No, he says: Don't call me, get out of
15 my car.

16 And then you have the surveillance. You got to
17 watch the surveillance, and what did Mr. Asaro do? He just
18 simply pulled out of that diner and pulled away. Did he speed
19 away? Nope, just pulled out of the diner, just drove away.

20 What did he do next? Well, the surveillance
21 continued and Mr. Asaro went down Liberty Avenue to Bam's
22 place of business. Nothing shocking in this at all. He had
23 gone there often, but in an effort to make this all sound
24 mysterious, the government asserted that Mr. Asaro got into
25 the car with an unknown male. Well, he clearly knew whose car

Summation - Macedonio

3696

1 he was getting into. The fact that they didn't is of no
2 consequence. And what did he do? Let's take a look at what
3 he did.

4 So now, Asaro, who, as we know, is aware of
5 surveillance, right? He understands that the FBI has been
6 surveilling him for years. He travels down Liberty Avenue in
7 a car, right? The car is going this way (indicating), so he
8 is in the passenger's seat. So he's directly on the side of
9 the house. He's not crouching. He's not hiding. He's not
10 disguised. He comes down here, he sees the FBI's truck set
11 up. One pass isn't good enough. He doesn't go up 101st
12 Avenue and around; nope, he turns around comes back down.
13 Does that sound like the actions of a man who just realized
14 that a murder victim, someone he killed had been discovered?
15 Doesn't it sound like somebody is: Hmm, let's see what's
16 going on down there. I don't have anything to do with it.

17 Two hours later he went to see his son. They got
18 some pictures of that, too. Then at 3:30 in the afternoon he
19 has a fender-bender. Now, they had been surveilling him all
20 day, if that really was, you know, like a big accident because
21 he was so upset, you would have seen it, but you didn't. He's
22 an 80-year old man, he backed into a pole. It was a
23 fender-bender, he got out, he looked at it, that's the end of
24 it. The government asserts that that's the tell-all sign that
25 Mr. Asaro was so upset that he got into a car accident at 3:30

Summation - Macedonio

3697

1 in the afternoon.

2 What does he do next? Does he run? Does he hide?
3 Does he go on the lam? Does he try and skip town?

4 Nope, he just goes about his business and he's not
5 arrested for the next seven months.

6 Again, to prove Mr. Asaro guilty of any part of the
7 Katz homicide you are forced to rely upon Gasper Valenti
8 100 percent; and that, ladies and gentlemen, is simply not
9 proof beyond a reasonable doubt of Mr. Asaro's guilt in the
10 Katz homicide.

11 So let's talk about Lufthansa. We know that
12 Lufthansa was robbed on December 11th, 1978, and clearly Rolf
13 Rebmann and Kerry Whalen were victims in this robbery. There
14 is no dispute about that. Gasper Valenti claims he was there.
15 Kerry Whalen, the only witness who could identify any of the
16 participants, says Valenti wasn't there. He identified Angelo
17 Sepe and Tommy DeSimone as the people who assaulted him and
18 threw him in the van. Whalen further testified that he got a
19 very clear view of Sepe as his high beams were shining
20 directly into their van.

21 Now, Kerry Whalen doesn't know these people from
22 Adam, right? He's not a guy from Ozone Park. He's just an
23 employee at Lufthansa. And he identifies Tommy DeSimone and
24 Angelo Sepe. Was that an accident? How could it possibly be?
25 Of course, it's not an accident. Those are the people he saw.

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Summation - Macedonio

3698

1 And what incentive does Kerry Whalen have to lie in this case?
2 Well, it's certainly not going to get him his \$5 or his shoes
3 back. I mean he was just here to tell the truth. He doesn't
4 know Vincent Asaro. He has no affiliation with him. He was a
5 victim in a serious crime. He was pistol-whipped and he had a
6 gun shoved in his eye.

7 The government treated him as if he was insane, as
8 if he wasn't even there. And why? Why did they treat him
9 that way? Because his testimony didn't match Gasper
10 Valenti's. And then after treating Mr. Whalen as if he were
11 insane, they wanted to use him. They wanted to confirm the
12 details of the inside of Lufthansa that Rolf Rebmann had given
13 you.

14 Is Whalen upset with the government? You bet he is.
15 Of course, he is. Why? Why is he so upset? Because two days
16 after he was viciously beaten his name appeared in the
17 newspapers. He was outed. He was outed by the federal
18 government, the very government he had relied upon to protect
19 him. The government then tried to make a big deal as to
20 whether or not he had ever described his assailant as having a
21 mustache. During Mr. Whalen's cross-examination, Ms. Gerdes
22 read from notes that Mr. Whalen had never seen before, notes
23 that he was never asked to confirm. But yet when he was asked
24 to identify his assailants in a 1979 lineup, all the people
25 who participated in that lineup had mustaches. And why?

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Summation - Macedonio

3699

1 Because that's what he told them. Why else would everybody in
2 the lineup have a mustache?

3 What else did Kerry Whalen tell you?

4 Well, Gasper Valenti clearly boasted that he had
5 stolen Whalen's badge and wore it around the Lufthansa
6 terminal, but Whalen told you nobody ever took his badge.
7 That he had it the next time he reported to work.

8 How does Gasper Valenti involve Vincent Asaro in the
9 Lufthansa heist? Just like he does with so many of the other
10 crimes, he simply says: Mr. Asaro approved my participation
11 in it and he was waiting in the crash car. Yep, Gasper
12 Valenti claims that Jimmy Burke and Vincent Asaro were waiting
13 in a crash car. Okay, well, it's 1978, so we know they don't
14 have cell phones. Nobody testified about a walkie-talkie.

15 There are over several highways, right? So here's the
16 Lufthansa terminal (indicating) and here is allegedly where a
17 crash car is (indicating), so they'd have to cross over all of
18 these streets (indicating) to get to the site to ward off the
19 police at precisely the right moment -- when you didn't know
20 if the police were there or not. Does that make any sense?

21 Absolutely no sense at all, but that's how Vincent Asaro was
22 involved in Lufthansa. He's in a crash car a mile away,
23 completely in communicado with any of the people at Lufthansa.

24 According to Gasper Valenti, after the greatest
25 airport heist in history the crew had no getaway plan, so they

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Summation - Macedonio

3700

1 decided to go back to Gasper's mama's house. And, of course,
2 this was all Vincent Asaro's idea. Who else? A house with
3 nine children in it, three adults and a sickly dog who slept
4 on the porch. Without waking a soul, those men formed an
5 assembly line and began parading their loot into the basement
6 of Gasper's mother's house at four in the morning. Really?

7 It's an unbelievable plan and Gasper's lies don't
8 get any better, but his inconsistencies do. He testified that
9 everybody counted the money, but Mr. Asaro left. That he left
10 with Tommy DeSimone and Jimmy Burke because they had to go
11 back to a halfway house. And that after that, Mr. Asaro went
12 to Fat Andy's club. Yet, you might recall that Special Agent
13 Mininni told you that Gasper told him that he, meaning Gasper,
14 Vincent Asaro, and Angelo Sepe stayed with the money all
15 night.

16 Take a look at the transcript, it's at Page 3025:

17 Answer: The night the individual -- meaning
18 Valenti -- along with Vincent Asaro and Angelo Sepe stayed
19 with the money.

20 Question: So that's Gasper's house, correct?

21 Answer: Yes.

22 It just can't be both ways. He was either there or
23 he wasn't, but the story, again, is changing. Then, according
24 to Valenti, he suddenly realized that having millions of
25 dollars in his house might endanger the 13 people that were

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Summation - Macedonio

3701

1 living there, so he had to get rid of most of the money; not
2 before keeping some for himself.

3 So what did he tell you about where he hid the
4 money? Well, he concocted this crazy story about taking the
5 door jams off so that he could put money in the door jams.
6 Now, how does that make any sense? What, every time he needed
7 a few dollars he was going to rip the door jams off again and
8 nobody was going to notice this constant construction in his
9 bedroom?

10 And then my favorite part is Gasper claims that he
11 had \$6 million in his house, \$6 million, but Mr. Asaro tells
12 him: Oh, go get some Christmas trees and pretend like, you
13 know, you're having a fire and then you can get rid of all of
14 the boxes and materials from Lufthansa. So according to
15 Gasper, Mr. Asaro, who never gave him any money ever before,
16 ever, for any other crimes they committed, gives him money to
17 go get Christmas trees when Gasper Valenti has \$6 million in
18 his house. Come on, really? You can ask yourself, well, how
19 would Gasper Valenti know so much about Lufthansa if he wasn't
20 there? Well, he testified repeatedly, he knew Tommy DeSimone,
21 he knew Angelo Sepe, he knew the rest of the characters,
22 that's how. The people who were on the government's board
23 that was up here during the course of the trial as being the
24 participants, people that Kerry Whalen identified as being the
25 participants, the people that assaulted him. Could Gasper

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Summation - Macedonio

3702

1 Valenti have been there? Maybe, I guess. But the
2 inconsistencies in his testimony make him unreliable in
3 determining Mr. Asaro's guilt or innocence.

4 I want to comment briefly about the recordings that
5 the government claims prove Lufthansa. The government's
6 asking you to interpret certain conversations in a way that
7 comports with their theory. So, for example, there's a
8 conversation where Gasper Valenti just blurts out the name
9 Henry Hill. Okay, I'm not really sure what that means, but
10 they say it's a reference to Lufthansa.

11 Then there's a conversation in which they are
12 discussing the fact that Danny Rizzo has no money. Well, so
13 what, none of them had any money. They're making it sound as
14 if, you know, that's it, that's the conversation.

15 And then there's a conversation in which Mr. Asaro
16 asserted that they never got their right money and he mentions
17 the name Jimmy. It could be Jimmy anybody. It could be Jimmy
18 Burke. It could be Jimmy Santos. Who knows? It could be
19 from anything. I submit to you that these recordings are not
20 conclusive of anything. And, once again, your left to rely
21 on Gasper Valenti.

22 So desperate is the government that Ms. Cooley
23 asserted in her summation, when the defendant says nothing,
24 that's proof, that's proof he participated. Okay, so now
25 silence is proof beyond a reasonable doubt. Now, even though

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Summation - Macedonio

3703

1 they wanted to make Kerry Whalen look as though he was insane,
2 look at who the agents surveilled immediately after Lufthansa.
3 Who were the agents looking at in 1978 and 1979?

4 Well, John Keenan got on the stand and he testified
5 that on December 26th of 1978, a few days after the Lufthansa
6 heist, that he was surveilling Angelo Sepe and Tommy DeSimone.
7 Robert Joyce testified that on January 31st of 1979 he was
8 surveilling Angelo Sepe. There is no surveillance of Gasper
9 Valenti.

10 Sal Vitale, Peter Zuccaro and Anthony Ruggiano also
11 testified to some details that they have regarding Lufthansa;
12 however, these men have been cooperating for years and the
13 details that they add, they really don't help. So, for
14 example, Sal Vitale says that he met with Mr. Asaro near Joe
15 Marsala's shop and that Mr. Asaro gave Joe Massino a bag that
16 contained jewelry and that it was from the Lufthansa heist.
17 The problem is Gasper says Joe Massino came to his house,
18 meaning Gasper's house, to collect that bag. You can't have
19 it both ways, which is it?

20 Peter Zuccaro testified that he -- that Gasper
21 Valenti never received his money from Lufthansa. Gasper says:
22 Yeah, I did. Can't have it both ways.

23 Anthony Ruggiano says that after Lufthansa, Vincent
24 Asaro was at the track and he was making big bets and lending
25 out money, larger than usual.

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Summation - Macedonio

3704

1 There's only so much you can do with this money,
2 right? So what does Gasper Valenti tell you? Well, first he
3 says that Mr. Asaro bought a house. Okay, so you have some
4 documents with regard to the house.

5 (Exhibit published.)

6 This is a deed that indicates that Theresa Asaro
7 bought a house in Moriches two years after Lufthansa. We
8 don't know how much that house cost. We don't know where the
9 money came from. They just put this document in there like,
10 there it is, gotcha, two years later he bought a house.

11 He also tells you that Mr. Asaro bought a car, that
12 he had a Lincoln Continental after Lufthansa.

13 (Exhibit published.)

14 Well, in all the surveillance we see lots of cars,
15 right? So in 1980 we see that Mr. Asaro's driving a 1977
16 Lincoln Continental that was registered before Lufthansa. And
17 then there is a whole series of cars, a Suburban, another
18 Lincoln, some Mercedes, and the list goes on and on. Proves
19 nothing. We heard about a boat, that Mr. Asaro bought a boat.
20 What kind of boat? When? A new boat? A used boat? A
21 sailboat? A powerboat? We don't know.

22 Gasper also claims that Mr. Asaro gave a
23 hundred-thousand dollars to his Uncle Mickey, then he lent him
24 another hundred-thousand dollars. It was just -- it doesn't
25 make any sense. There is not -- there is just not that much

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Summation - Macedonio

3705

1 money, and yet this is what you get.

2 Now, the government actually asserted that the
3 surveillance photos of Vincent Asaro at Jimmy Burke's wake in
4 1996, 20 years later, was proof that Vincent Asaro was part of
5 Lufthansa. Come on.

6 With regard to John Tagliaferro, he had no idea
7 where that money came from. And Ronnie Cecchini, he didn't
8 even have any idea what was in the package, but both men, both
9 men described small packages, not a package that had millions
10 of dollars in it.

11 Then, of course, there is Afters. Gasper Valenti
12 insisted that that club was named Afters after Lufthansa.

13 (Exhibit published.)

14 Now, isn't it crazy for a group of individuals who
15 were so surveillance conscious, who had just committed the
16 biggest heist in history to name a club after the biggest
17 heist in history? Does that make any sense to you at all?
18 It's just not true. And the government claims that Afters got
19 its liquor license on December 22nd, 1978. How do you get a
20 liquor license 11 days after the heist? Could this be After
21 Hours? Could it be after anything? Yeah, but it's not after
22 Lufthansa. Practical experience tells you nobody is getting a
23 liquor license in 11 days. It's not happening. And then, of
24 course, we had to hear about Blondie and Gladys Knight and the
25 Pips. This is just another example of Gasper going too far.

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Summation - Macedonio

3706

1 Taking all of this evidence into consideration, including
2 Kerry Whalen's testimony, all of it, the government has simply
3 failed to prove that Mr. Asaro had any participation in the
4 Lufthansa heist.

5 (Continued on the following page.)
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Summation - Macedonio

3707

1 MS. MACEDONIO: (Continuing) You also heard
2 testimony about the murder of Richard Eaton. First, it's
3 important for you to understand that Mr. Asaro has never been
4 charged with Eaton's murder. It was merely filler to make you
5 believe that Mr. Asaro was actually capable of murdering Paul
6 Katz, a crime that had been committed a decade before.

7 Let's look at what you heard. Gasper Valenti
8 testified at this trial that Jerry Asaro knocked on his
9 window, that they tried to dig a hole but it was too cold.
10 Gasper Valenti had no idea whose idea it was to put the body
11 in the trailer, but Jerry Asaro and Frank Burke put Eaton in
12 the trailer and then Jerry Asaro went down to the fence
13 company to get a lock. Okay. Well, in his prior discussions
14 with the agents, Gasper told them that Jimmy Burke, Frankie
15 Burke and Mr. Asaro knocked on the window. Very, very
16 different. Very different. That it was Mr. Asaro who
17 suggested putting Eaton in the trailer and that Gasper Valenti
18 unlocked the trailer, then put the body in and Gasper locked
19 it again.

20 See, it's these details where he gets tripped up.
21 It's two completely different stories. He knows there's a
22 body in the trailer, but at different times, he's blaming it
23 on different people. It's just another example of how the
24 story is constantly changing.

25 Let's talk a little bit about loansharking and this

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Summation - Macedonio

3708

1 is contained primarily in Racketeering Act Number One. The
2 time frame that you have to consider is from 1968 to 1990.
3 So, again, in order to find him guilty, who do you have to
4 believe? Gasper Valenti, because he's the only one who
5 offered testimony about this. There's no victims presented to
6 you. Not a single one.

7 At one point, Gasper talked about people in the
8 neighborhood like Bobby Marshall, they constantly talked about
9 him the drunk guy whose debt was \$100 that they collected over
10 and over again. Then in his next breath, he's talking about
11 borrowing money from Jimmy Burke. He, he was having to borrow
12 money from Jimmy Burke. Later, Gasper told you that he was
13 collecting 4 to \$5,000 a week at the Great Im-pasta. Then he
14 told you that the restaurant had to close down because
15 Mr. Asaro had gotten himself into trouble. Does that make any
16 sense to you?

17 During his testimony, he identified John Zaffarano
18 as a victim or a customer, but you didn't have the opportunity
19 to witness John Zaffarano yourself. Right? The government
20 called him as a witness. And what did he tell you? He told
21 you he wasn't a victim of loansharking or extortion. Take a
22 good hard look at John Zaffarano's testimony. It's not what
23 the government presented to you and it was their witness.
24 John Zaffarano didn't move to Florida to get away from Vincent
25 Asaro. There was no testimony of that. He just got up there

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Summation - Macedonio

3709

1 and said that.

2 Where is the testimony about any of this
3 loansharking money getting kicked up? Did this loansharking
4 business, this so-called loansharking business in furtherance
5 of the Bonanno crime family, why is there no testimony about
6 money going up? Remember, this is a racketeering case so you
7 have to find, in order to find Mr. Asaro guilty, you have to
8 find that he was operating in furtherance of the Bonanno crime
9 family. Where is the evidence of that?

10 And then we have an extortion of John Zaffarano and
11 this is about John Zaffarano having to pay back money that he
12 claims Mr. Asaro told him -- excuse me. Let me start over.

13 This is John Zaffarano claiming that he had to pay
14 back money that Mr. Asaro told him that his father,
15 Mr. Asaro's uncle Mickey, had borrowed. Let's take a look at
16 what he said. I have a little bit more than what's on the
17 chart.

18 Question: Now, when you lent the money to
19 Mr. Asaro, did you do that because he threatened you?

20 Answer, by John Zaffarano: Oh, no, he never did
21 that.

22 Question: Did you do it because you were scared?

23 Answer: No.

24 Question: Did he threaten you that you had to give
25 him the money?

Summation - Macedonio

3710

1 Answer: No.

2 Question: Did he scare you that you had to give him
3 the money?

4 Answer: No.

5 Question: Did he force you to give him the money?

6 Answer: No.

7 And there was one other question: The money that
8 you paid back, it was your father's debt, and you did that
9 willingly, right? And his answer was, Yes.

10 As to the proceeds of his father's properties in
11 Manhattan, John Zaffarano's testimony makes clear that he gave
12 Mr. Asaro a portion of the proceeds because he wanted to. He
13 told you he did all sorts of things for family members. The
14 guy who came into \$19 million didn't know what to do with it.

15 The bigger picture here, quite frankly, is that the
16 government took anything that they could that had to do with
17 money and through Gasper Valenti, made it sound like Mr. Asaro
18 was extorting everybody, but that's simply not the case. John
19 Zaffarano wasn't extorted. John Zaffarano is his cousin and
20 he came in here and told you that.

21 The government elicited testimony from Gasper
22 Valenti about a porn star. Gasper testifies about this whole
23 meeting where he was in California with John Zaffarano and
24 there was a porn star who wasn't living up to the contract so
25 they had a big sit-down with some other organized crime people

Summation - Macedonio

3711

1 and, yada, yada, yada. They didn't ask John Zaffarano a
2 single question about that. Not a single question. Why do
3 you think that is? Because he just wasn't going to support
4 Gasper. It was a lie. They gave John Zaffarano immunity.
5 They could have asked him whatever they wanted to and they
6 just opted not to.

7 You also heard from Jose Estrella. He was the
8 person who was betting with Gasper Valenti. He is the only
9 betting customer that you heard from. And you might recall
10 Gasper Valenti told the agents that his name was Joe Aquella.
11 Well, Mr. Estrella met Mr. Asaro when he was having a problem
12 getting paid for his betting with Mike Palmaccio. And
13 according to Mr. Estrella, Mr. Asaro tried to resolve that for
14 him. And guess what? He didn't. Mike Palmaccio just paid
15 him no mind, put him on the pay-no-mind list.

16 And so what happens next? Well, Estrella comes
17 back. He wants to do some bets and Mr. Asaro tells him that
18 he knows somebody else he could bet with but that he, himself,
19 Mr. Asaro, had nothing to do with it. All of Mr. Estrella's
20 dealings thereafter are with, guess who? Gasper Valenti.

21 For a little over two months, Estrella places bets
22 online and when it was time to pay up, according to Valenti,
23 Estrella went on the lam. When Valenti was finally able to
24 collect the money, he told Mr. Asaro, I come up with some
25 money and what did Mr. Asaro say to him? Gasper, that's your

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Summation - Macedonio

3712

1 money, keep your money, I don't have anything to do with that.
2 How is that a gambling operation between all of them? It's
3 hardly a bookmaking enterprise. I mean, you just knew that.

4 So what did they do? Years later, in 2012, the
5 agents send Gasper Valenti back to Jose Estrella, years after
6 he had last seen him, a man they knew had a gambling problem
7 and here is my question.

8 So, is this another example of Gasper Valenti going
9 to someone who has no affiliation with organized crime at the
10 direction of the FBI asking him for money?

11 Answer: Yes.

12 And this is years after the gambling issue with
13 Mr. Estrella that he testified about in court, correct?

14 Answer: Correct.

15 Now, I think it's very clear that the evidence is
16 simply that there was no bookmaking operation, but when you
17 sit back and you look at the elements of the offense, because
18 the Judge will charge you and you will understand what you
19 have to find for each of these crimes, you are going to find
20 that the government has failed entirely with respect to the
21 number of participants and the amounts. There is absolutely
22 no testimony as to what the amounts of gambling was going on.
23 And Gasper Valenti, by his own admission, has one customer so
24 I don't know how you find him guilty of this racketeering.

25 That brings me to Carmine Muscarella. This is

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3713

1 perhaps the most telling part of the government's case and of
2 Mr. Valenti's cooperation. After recording, making recordings
3 for two years and coming up with nothing, he gets a phone
4 call, there's a phone call between Mr. Asaro and Mr. Valenti.
5 They're talking about a piece of property and this has really
6 nothing to do with Mr. Asaro. He tells him go get some money,
7 you know, go get the money, but the actual money itself and
8 why, why there was money coming had nothing to do with
9 Mr. Asaro. This is simply because Gasper Valenti had asserted
10 a claim with Carmine Muscarella that he was entitled to some
11 proceeds of a house because it was his godfather who died.

12 Okay. There's Carmine Muscarella. An everyday
13 working man. You saw him. He testified at the trial. He
14 works for an electrical construction company. He's got no
15 ties to organized crime, yet the FBI took Gasper Valenti in
16 his office demanding \$5,000 and Gasper Valenti knew there was
17 no such agreement. The government simply set Carmine
18 Muscarella up by sending Gasper Valenti in to see him and then
19 when Carmine refused to attack Vincent Asaro at this trial,
20 they attacked him on the witness stand. I encourage you to
21 review the Muscarella recordings, especially 204 and 205 in
22 which he adamantly denies making an agreement with Gasper.

23 Had you only been able to rely on Mr. Valenti's
24 testimony, you might have believed that Mr. Muscarella paid
25 Gasper because he was afraid of Mr. Asaro but, luckily, you

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Summation - Macedonio

3714

1 didn't have to rely on Gasper this time. You heard from
2 Carmine Muscarella. When asked if there was another reason
3 besides the fact that Gasper was his stepfather's godchild,
4 why he paid the \$3,000, do you remember what he said? The
5 government was asking him, Was there any other reason? He
6 said, Other than the fact that he was an irritant on my anus,
7 no, that was it. That was his testimony.

8 Carmine Muscarella told both Gasper Valenti and
9 Vincent Asaro, he didn't want to hear from them again, this is
10 it. That's very clear on the recording. He was going to
11 settle this. He was going to give him a few thousand dollars,
12 he had given thousands of dollars to all sorts of other family
13 members for this property and he didn't want to hear from
14 Gasper anymore. The reason why he is saying this is Gasper
15 just kept calling him, calling him, calling him, calling him,
16 but you don't have any of those recordings. You don't have
17 recordings of Gasper calling Muscarella saying, Where's my
18 money, where's my money, where's my money.

19 Carmine Muscarella also testified about the money he
20 gave Vincent Asaro a few weeks later. He said he felt sorry
21 for Mr. Asaro. How humbling it must have been for Mr. Asaro
22 to come to him for money because Mr. Asaro was such a proud
23 man. Does that sound like the testimony of somebody who's
24 scared and extorted?

25 Despite an attempt by the government to bully him

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Summation - Macedonio

3715

1 into answering differently and shamelessly incorrectly trying
2 to connect his brother to organized crime, Mr. Muscarella's
3 testimony never wavered. He wasn't extorted into paying
4 Gasper Valenti, but he was set up by the FBI.

5 Racketeering Act Number Fourteen is an alleged
6 extortion of Robert Cotrone, Bam. While you may have heard
7 that name throughout the trial, you certainly didn't see or
8 hear from him here, did you? Where is Bam? Not a witness at
9 this trial. But take a look at the recordings when you're
10 deliberating about this event, about the Bam extortion.

11 So, for example, recording number 242. Vincent
12 Asaro says, Frankie told us to come up to the accountant,
13 understand? And that Anthony Gurino, understand, where is the
14 books? He's supposed to show us the books. And then John
15 Ragano says, All he has to do is call his accountant. His
16 accountant will call the guy up and take care of it. They'll
17 take care of it. Recording 243. They don't want to show us
18 the books.

19 What kind of extortion is going on where there's an
20 accountant involved? It just doesn't make sense. Something's
21 not adding up. And this is particularly true when you start
22 to look at the money. In recording 241, they're talking about
23 \$70,000 and then they're talking about \$30,000 and they're
24 talking about \$136,000. You just don't know what they're
25 talking about and Gasper admits to you, I don't know the

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Summation - Macedonio

3716

1 details of it but I just don't know, they wouldn't share
2 anything.

3 Now, the worst part about these conversations is
4 John Ragano says, Let's go stab him in the neck. You know
5 that didn't happen. You know this is these guys sitting in
6 the dining room eating eggs, just yakking at each other.
7 Nobody got stabbed in the neck. You would have heard about
8 that.

9 And who's the victim here? Right? You've heard
10 over and over and over again Bam's part of this, Bam's an
11 associate, Bam's this. Well, you're either in or you're out,
12 right? I mean, you can't be in and be a victim. You've got
13 to be out to be a victim. If you're in and you're wanting all
14 of this, then how are you the victim? I don't understand the
15 theory. You heard testimony, you saw some surveillance about
16 Mr. Asaro talking to Bam on the street and the government
17 claims that he showed signs of physical distress. I didn't
18 see that. This is also the same Bam that told Mr. Asaro he
19 wasn't allowed on the block.

20 You heard some testimony about an arson that
21 occurred, I don't know, maybe in 1980, maybe 1981. That's how
22 it's charged in the indictment. And what does Gasper say
23 about this arson? Well, once again, he says, Vincent Asaro
24 told me to do it. And what did he get for that? He got
25 kisses and hugs. That's what Gasper says. Oh, they kissed me

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Summation - Macedonio

3717

1 to let me know how happy they were with me.

2 Gasper claims that he went to this club, Afters,
3 that he poured gasoline all over the floor and then he doused
4 a ball with gasoline, put the ball in his hand, lit it on fire
5 and threw it into the club. Okay. That doesn't make any
6 sense. That, to me, that sounds quite painful. I don't know
7 who would come up with that plan, but you're not holding a
8 ball doused with gasoline and throwing it through anything.

9 Now, he claims here that he threw the ball, the ball
10 that he had doused in gasoline, lit on fire in his hand,
11 through a door. Right? But previously, he talked about
12 throwing it through a window. That had to be corrected and
13 here's why. That's Afters. There's no windows. No windows
14 at Afters. It had to go through a door. So this was cleared
15 up before his testimony here.

16 Now, you might be asking yourself, well, why would
17 anybody say they did an arson if it wasn't accurate? It was
18 1980. He knew there had been a fire and the only thing he had
19 to say about this is that my client authorized it and suddenly
20 there's a charge in an indictment.

21 You also heard testimony about a murder
22 solicitation. This is one of my favorites. Once again, you
23 have to rely on Gasper Valenti and look what he says.

24 Question: After Bobby went to jail, did you
25 continue to discuss Gary Ferreri with Vinny?

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Summation - Macedonio

3718

1 Answer: Off and on.

2 Question: And who else?

3 Answer: Jerry.

4 Question: What were those discussions?

5 Answer: Jerry wanted to, Jerry wanted to kill him.

6 Vinny said take it easy, you know, you're getting ahead of
7 yourself. He's a rat. He's a stool pigeon. He's your
8 cousin. Let's see what's going to happen with this.

9 Let's go to the next page.

10 Question: Who brought it up?

11 Answer: Jerry brought it up.

12 Question: What did Vinny say?

13 Answer: He said we'll do something. Just relax.

14 Take it easy. Relax. Stop pumping it up.

15 That doesn't sound like a murder solicitation.

16 Where is the solicitation? And then there's no follow-up.

17 Where is the would-be victim? So desperate is the government
18 on this act that they claim that an unrelated arrest of Bobby
19 Giallanzo shows their criminal association in this. How?
20 Vincent Asaro is his uncle. At the end of the day, nothing
21 ever happens here. There is no murder solicitation.

22 You heard about the Halloween capers, I like to call
23 them, which is Racketeering Act Number Six and that charges
24 sometime between 1984 and 1986, a two-year period, and
25 according to Gasper Valenti, this is where four grown men put

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Summation - Macedonio

3719

1 on masks and gloves, take guns and walk up to an armored car
2 in a supermarket parking lot because they thought they would
3 go undetected. Again, it's, it's fantasy and there's not a
4 police report, there's nothing. All you have is Gasper
5 Valenti saying, This is what happened. He told us to do it.
6 This is what happened. He told us it would be okay. This is
7 what happened. If we would have succeeded, we would have
8 given him all the money.

9 Same thing, over and over again.

10 You also heard about the gold salts robbery which is
11 kind of an interesting thing because probably most of you, I
12 hadn't heard of gold salts before any of this so it's kind of
13 an interesting thought that gold would actually be turned into
14 liquid, but the players in this really, really don't make
15 sense. They don't add up.

16 When Gasper Valenti testified in court here, he said
17 that Jerry was taken out of the picture and a guy named Funzi
18 was put in. But take a look at this chart. What did he tell
19 the agents? Well, Agent Mininni's testimony about his notes
20 from meeting with Gasper Valenti regarding the gold salts.

21 Answer: Individual along -- individual means Gasper
22 Valenti -- along with Bobby, last name unknown, Jimmy, Santos
23 and Jerry Asaro hijacked and robbed a Federal Express truck.

24 Question: That was the gold salts robbery that we
25 heard so much about?

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Summation - Macedonio

3720

1 Answer: Yes.

2 But when he testified here, Jerry is not there.
3 What happened?

4 Answer: Jerry was supposed to go with us, but later
5 on Jimmy came and he says he had to let Jerry go because Funzi
6 was in trouble. Funzi was a made member of the Colombo crime
7 family also.

8 You know, I mean this is a score where he claims he
9 got almost \$200,000. He doesn't know who went with him?

10 This is a transcript. This is 217, recording 217
11 which is in evidence and this is page ten of that. Now,
12 they're talking just generally about, What are we gonna do.
13 And this and that. I mean, really, Gasper could have been
14 talking about people landing on Mars. Mr. Asaro is just
15 passing the time with him and it's nonsense.

16 I mean, he's talking about, taking to Danny Rizzo
17 and getting the address. That never happened. He can't get
18 the players straight. He can't tell you what's been going on.
19 And on then on page two, he is really trying to bait
20 Mr. Asaro. So he says, so he's talking about, you know,
21 should he go there and Mr. Asaro says, I don't remember where
22 it was. I never went there. You went there. And he
23 continues. He goes on and on about maybe it's in Freeport and
24 finally Asaro says, If you don't remember, what's the sense in
25 going?

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Summation - Macedonio

3721

1 This is just like idle chatter. You know, they're
2 not talking about actually doing something. This is just a
3 back and forth with one another. But not getting the players
4 straight? Not knowing who was with you? That's real. When
5 you testify in court, when you're talking to agents as
6 compared to sitting in Sapienza's deli, that's different.

7 You also heard testimony from Guy Gralto. Like
8 other cooperators, Gralto was a criminal who escaped the
9 consequences of his criminal activity by negotiating a deal
10 with the State authorities. This is true, that Gralto had
11 committed crimes while on bail. But like the many other
12 racketeering acts and I bring you back to this constantly, you
13 have to ask yourself was this done in furtherance of the
14 Bonanno crime family? Was Vincent Asaro just doing this on
15 his own? Because they're racketeering acts. They're not
16 things that are charged independently. All of these
17 racketeering acts have to be done in furtherance of the
18 Bonanno crime family.

19 Racketeering Act Number Ten charges bookmaking from
20 1994 until 2002 and on this, really all you have is Sal
21 Vitale's word. It's kind of like what he throws in for
22 Mr. Asaro. It's a time filler within the chart for the
23 government. I'm not going to go back over Sal Vitale's
24 murderous past. You know it. You know he can't be trusted.

25 There's also an extortion that's charged with regard

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Summation - Macedonio

3722

1 to Mr. Asaro's daughter. It's Racketeering Act Number Eleven,
2 his daughter Tonya. And this is very interesting because
3 Gasper claims that he went to a building, that he knocked on
4 somebody's door, nobody answered, they called somebody's name,
5 they don't even know if anybody was home, and then after 10 or
6 15 minutes, they left and nothing happened.

7 So here's what he says. We called out his name and
8 said, you know, We're friends of Tonya, we want to speak to
9 you. Nobody answered. There were bicycles and Big Wheels in
10 the hallway so we banged on the door, knocked on the door, and
11 no one answered. We waited about 10, 15 minutes. Nothing
12 happened and then we left.

13 That's it. That's what you get. And then he claims
14 he went back and he told Mr. Asaro that there was nobody
15 there. So what did Mr. Asaro say? He said, Okay. There's no
16 set amount. I don't know if anybody is home. We don't know
17 if this is true. He can't remember the guy's name. We don't
18 hear from Vincent Risotto, the guy he claims went with him.
19 We don't hear from Tonya. We don't have a victim. You have
20 nothing. You certainly don't have proof beyond a reasonable
21 doubt.

22 Ladies and gentlemen, simply because someone is
23 indicted with a crime doesn't mean that they've actually
24 committed it. Your job now is to determine whether or not
25 Mr. Asaro committed the crimes contained in the indictment and

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Summation - Macedonio

3723

1 whether the crimes that are contained in the indictment were
2 in furtherance of the racketeering acts. Sometimes the
3 government gets it wrong and you heard that in this case. You
4 heard some of the cooperators say that they had been charged
5 with things that they hadn't actually done. We submit to you
6 that when you're left to rely on only the words of Gasper
7 Valenti, that you have a reasonable doubt.

8 For some of the alleged racketeering acts, Mr. Asaro
9 is not even deemed to be a participant. The arson at Afters,
10 the botched attempt of robbery on the armored car on
11 Halloween, the gold salts robbery, these are all things that
12 Gasper Valenti did and then he attempts to implicate Mr. Asaro
13 by telling you that he passed it by Mr. Asaro and that it was
14 done at Mr. Asaro's direction, but these are just more lies.

15 As Sal Vitale told you, guys in this life lie all
16 the time and Peter Zuccaro told you guys in this life take
17 credit for things they didn't even actually do. If you are
18 going to believe Gasper Valenti, he never received a dime, not
19 a dime from most of the crimes he committed.

20 Question: And you testified that all the money you
21 made, essentially all the money you made from these crimes,
22 you gave to Mr. Asaro, right?

23 Answer: Yes.

24 Question: How did you support your family?

25 Answer: From the money that he would give me, very

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Summation - Macedonio

3724

1 little, and from the crimes, and I borrowed a lot of money.

2 Well, Gasper Valenti told you that he got money from
3 Lufthansa and he got money from the gold salts robbery but he
4 gambled it all away and that he borrowed money from countless
5 people which he never gave back. So he led a life of
6 committing crimes. Doesn't make sense. It just doesn't make
7 sense that Gasper Valenti didn't receive any money.

8 There he is one more time because Gasper Valenti
9 above anything, was about the money. And so what does he tell
10 you? The more you tell them things, the more you make up
11 stories, you know, they'll give you more money.

12 (Continued on next page.)
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Summation - Macedonio

3725

1 BY MS. MACEDONIO: (Continuing)

2 MS. MACEDONIO: What's worse; making up stories to
3 get money, selling your soul or death before dishonor? We're
4 not running from what Vincent Asaro is. He's a man who
5 marches to the beat of his own drum. He always has and he
6 always will. But that does not make him guilty of the crimes
7 charged in the indictment. You might not like the language he
8 uses. You might not appreciate the way his temper flares, but
9 that's not guilt beyond a reasonable doubt. Don't be
10 distracted by his prior incarceration. You're not asked to
11 consider the facts of that case.

12 At the end of day, the recordings of Vincent Asaro
13 depict a man who spoke his own mind, no matter who he
14 offended. A man who always did what he wanted. Those two
15 attributes eliminate him from being the man that the
16 Government describes as a loyal soldier to the Bonanno crime
17 family. When you look at this case through that lens, when
18 you listen to the recordings with that mind, it is impossible
19 for you to conclude that Vincent Asaro is guilty of
20 participating in the affairs of the Bonanno crime family and
21 acting in furtherance of it.

22 During your deliberations, you should ask yourselves
23 two questions. One, what did Mr. Asaro do. I submit to you
24 that once you eliminate Gasper Valenti as a reliable person,
25 one that you would not trust in your own life, a person who

Summation - Macedonio

3726

1 you wouldn't trust in your own life, then you won't be able to
2 find guilt beyond a reasonable doubt with regard to the crimes
3 alleged against Mr. Asaro.

4 And then you need to ask yourself a second question.
5 Why was Vincent Asaro doing things? Was it for himself? Was
6 it for his own personal gain? Or for the Bonanno crime
7 family? After conducting this analysis, I suggest you will
8 come to the one and only true verdict and that's a verdict of
9 not guilty.

10 I thank you very much for your attention this
11 morning.

12 THE COURT: Would you like a break?

13 MS. ARGENTIERI: Just two minutes, Judge, if you
14 wouldn't mind.

15 THE COURT: That's fine.

16 THE COURTROOM DEPUTY: All rise.

17 (Jury exits.)

18 (In open court; outside the presence of the jury.)

19 (Recess taken.) (In open court.)

20 (Judge ALLYNE R. ROSS enters the courtroom.)

21 THE COURT: Everything's ready.

22 MS. ARGENTIERI: Yes, Judge.

23 (Jury enters.)

24 THE COURT: Please, be seated.

25 Ms. Argentieri.

Rebuttal - Argentieri

3727

1 MS. ARGENTIERI: Thank you, Judge.

2 REBUTTAL

3 BY MS. ARGENTIERI:

4 MS. ARGENTIERI: Good afternoon.

5 THE JURY: Good afternoon.

6 MS. ARGENTIERI: I know this has been a long time
7 coming and I just want to thank you for your time and your
8 attention, and for the careful way that you have listened to
9 all of the testimony and all of the arguments. It's a lot of
10 information and I'm just going to beg your indulgence for you
11 to listen to me just a little bit longer and then, you will
12 get the case and it will be up to you to do justice in this
13 case and to hold this defendant accountable.

14 Now, what is evidence? It's not the argument of
15 lawyers, it's not what I say, it's not what Ms. Macedonio
16 says. It's the over seventy witnesses that you heard from,
17 their testimony in the last four weeks. It's the recordings.
18 It's the photographs. Lawyers can get it wrong even if
19 they're trying to get it right, so when you go back there to
20 deliberate, ask for the evidence. Ask for the transcripts.
21 Ask for the recordings. Ask for Gasper Valenti's testimony
22 about the recordings. Look at it and test it yourselves, and
23 when you do, you will find that we have proven each of the
24 charged crimes beyond a reasonable doubt.

25 Now, it's a little unclear to me, I have to admit,

Rebuttal - Argentieri

3728

1 exactly what the Defense is admitting at this point. They
2 seem to have mocked all the surveillance witnesses that we put
3 on the stand. It seems one thing, they might be conceding the
4 Bonanno crime family exists, but if I was listening correctly,
5 I think that they may have said that the defendant wasn't a
6 part of it. Or maybe he was a part of it. Really?

7 You heard the defendant talking about the Bonanno
8 crime family and his intimate involvement with it on tape.
9 They say to you, this defendant, he beats to his own drum.
10 That may be, but he's in the marching band, and that's the
11 Bonanno crime family private. Let's just look, just for a
12 second, just to get this out of the way, about what the
13 defendant says on tape. This defendant knows the Mafia life.
14 He knows it better than anyone, and he operates within it, and
15 he commits crimes to further his own interests and the crime
16 family's interests.

17 This is Government's Exhibit 212 in evidence. The
18 defendant talks about a beef he's having with another crew.
19 He says, what do you guys think, you're the only crew in this
20 neighborhood? And he starts talking about all the other
21 incidents these guys have gotten into and he says, Vinny
22 Asaro's name, zero. Your name, this incident, that incident,
23 and it's a beef by Skinny Dom's club. And who's winning?
24 It's this defendant. No one knows the life better than him.

25 Government's Exhibit 216-T. Had a beef with this

Rebuttal - Argentieri

3729

1 guy, with the Luccheses. He was a skipper. The guy told him
2 you can't talk to me like that. He said I'm talking to you
3 like that.

4 He tells Gary Valenti all about this beef with the
5 Luccheses and he says, you know, we got to make an appointment
6 with the guy's Captain. Ga, I smothered him. I abused the
7 fuck out of him. Then he says the guy said to him, oh, you
8 can't talk to me like that. And he says, I'm a friend.
9 Meaning the guy said to him I'm a wiseguy, don't talk to me
10 like that. Because you're supposed to treat each other with
11 some modicum of respect. This defendant is right, he beats to
12 his own drum, he didn't do that.

13 He says you ain't my friend, you gotta learn the
14 rules. That's out of this defendant's mouth. I'm here
15 35 years. This is the defendant saying that he has been
16 straightened out for 35 years. He says the only thing I got
17 is my age and you're not going to bust my chops. No one knows
18 the life better than this defendant. And there are countless
19 examples of it.

20 Government's Exhibit 219. He's settling a beef.
21 The end of this he says the Gambino crew is destroyed, it's
22 destroyed. You want to know something? I'm like only wiseguy
23 left in the neighborhood. And Gary starts listing the names
24 of otherwise guys. You know what I'm saying? People of
25 substance. Out of the defendant's own mouth. He's a wiseguy

VB

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Rebuttal - Argentieri

3730

1 that matters.

2 Government's Exhibit 221. This is when the
3 defendant is, his star is on the rise. Nicky Santora's been
4 arrested. Tommy DiFiore, you know that he knows because he's
5 known for 30 years because we've shown you pictures of he and
6 Tommy DiFiore together at the same places for years. Tommy
7 DiFiore is the acting boss. Things are looking good for Vinny
8 Asaro. He says, I do all the running around. Jackie's on
9 parole, Jerry's on parole. If someone's got a beef, I take
10 care of it. They don't go there.

11 There was also some suggestion that the crimes the
12 defendant is charged with had nothing to do with the crime
13 family. That's absurd. It's ridiculous. He's committing
14 loansharking and he has his crew picking up the money. He's
15 got Gasper Valenti picking up the money. He's got Bobby
16 Giallanzo, who you will remember opened the auto body shop,
17 collecting loanshark payments for him. Those are crimes
18 committed in furtherance of the enterprise. He's using the
19 means of the enterprise to carry out the crime.

20 They also, there was some suggestion made that
21 there's nothing wrong with associating with other people, with
22 spending time with other people. That's certainly true. But
23 in all of these pictures at these social clubs -- oh, and this
24 was a big thing with all the surveillance agents testified --
25 did you see him committing a crime that day? No. Did you see

VB

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CRR

Rebuttal - Argentieri

3731

1 him murder someone in the street? No. It's a secret society.
2 They're not committing their crimes out in the open.

3 Did you ever see in one of these surveillance photos
4 anyone doing any legitimate day's work? No. Because you know
5 what they're doing. They're talking about committing crimes
6 inside the social club. That's where the gold salt robbery
7 was planned. These where the attempted Halloween robbery was
8 discussed. They're getting together and they're planning and
9 committing crimes. And there's nothing funny about it. These
10 FBI agents are not paparazzi. It's insulting. They're taking
11 photos of these individuals, individuals who you know engaged
12 in murder, shakedowns. They're following them because it's
13 their job.

14 John Carillo who, by the way, is not an FBI Special
15 Agent contrary to the slide that was put up there, he worked
16 with the NYPD and is now an investigator. They said, oh, he's
17 an expert in wakes, it doesn't mean anything that all these
18 people went to wakes. But you know from John Zaffarano
19 himself that right after his father died, the defendant used
20 that opportunity to shake him down. To collect money from him
21 on a loan the man did not even believe he owed. You heard
22 from Anthony Ruggiano that at a baptism he planned a murder.

23 The Defense says that Gary Valenti had a plan. He
24 had years to think about it. He was going to walk in and he
25 was going to tell the Government stories that he had been

1 thinking of. Did that make sense? Didn't you hear that Gary
2 Valenti came in to cooperate? He wasn't facing any charges
3 and as a result of the information that he provided, he pled
4 guilty to serious crimes? He faces a guidelines range of
5 imprisonment of 168 to 210 months. So far, it doesn't seem
6 that that good a plan. You also know that if he lies, his
7 cooperation gets ripped up.

8 And then the Defense says his plan was that he was
9 going to implicate dead people and they list a whole bunch of
10 people that have died. Jimmy Burke, and Nicky John Zaffarano,
11 and Junior Berger, and Dominick Cataldo and Paulie Vario and
12 Anthony Spero. What about all the people who committed these
13 crimes with the defendant, including moving the body at his
14 direction, who are still alive? Some of whom you've heard
15 from at this trial. What about Jerry Asaro, the defendant's
16 son? Danny Rizzo, who Gary Valenti recorded. Mike Palmaccio,
17 Jack Bonaventure, John Zaffarano, who you heard from. Johnny
18 Tags, who you heard from. Ron Ceresani, who you heard from.

19 In the face of the overwhelming evidence of the
20 defendant's participation in the Lufthansa heist and other
21 crimes, this is their response. It defies all logic. How is
22 it going to work exactly? He was going to record the
23 defendant talking about criminal activity and just like, cross
24 his fingers and hope that Vinny didn't get wise and say no, I
25 didn't do that? You listened to the recordings, that is not

Rebuttal - Argentieri

3733

1 their relationship.

2 The first time the Lufthansa heist comes up, it's
3 the defendant that brings it up. He and Gary Valenti are
4 talking about Danny Rizzo, another participant in the heist,
5 this is Government's Exhibit 216, and the defendant says
6 unprompted, we never got our right money, what we were
7 supposed to get. We got fucked all around. Jimmy kept
8 everything. And Gary says back to him, what are you talking
9 about? We got our end. Jimmy kept the money from the other
10 thing, from the other guys. Do you hear the defendant say
11 what are you talking about, Jimmy who? No. They know what
12 they're talking about. You know what they're talking about.
13 The Defense could not even come up with an explanation for
14 that because it speaks for itself.

15 Another time when they discuss the Lufthansa heist
16 they're alone in the defendant's house. Gary Valenti says did
17 you go for Henry? This is Government's Exhibit 238. Take it.
18 Listen to it. He says, did you go for Henry? He says that's
19 one last -- it's hard tore me to say -- that's one less left
20 of Lufthansa. The defendant says, fuck him. Gary Valenti
21 says, he made it like he was there with us. What else could
22 they be talking about? Nothing. It speaks for itself.

23 And you don't hear the defendant on that recording
24 say what do you mean, they're with who? Or if you believe the
25 Defense, who may now be crediting that Gary Valenti went on

Rebuttal - Argentieri

3734

1 the heist, I'm still a little unclear on the summation but he
2 could have been there maybe. Does he say what do you mean
3 there, Gar, he was there with you? No. These recordings are,
4 they're just devastating evidence of this defendant's guilt.
5 But you would only know if Henry Hill dying means there's one
6 less left of Lufthansa if you were there and you know who else
7 was there.

8 The cooperating witnesses were all asked why they
9 cooperated. Gary Valenti told you, and I think you saw his
10 testimony, you evaluate it for yourself. He told you that
11 there were a couple reasons. He had remorse, he was having
12 nightmares and he needed help for his family. All of the
13 cooperating witnesses told you that when they come in, they
14 are all in. They have to tell everything.

15 You know from the testimony of special agent Adam
16 Mininni, and this is at page 2942 of the transcript, when Gary
17 Valenti came in, his very first meeting, what did he say? The
18 first thing he told us is that he was an associate and he's
19 been around Vinny Asaro for 42 years. It's the first sentence
20 out of the man's mouth.

21 And then during the course of that first briefing,
22 what crimes did he tell you about? All crimes he testified
23 about here today. Murders, beatings, the murder of Paul Katz,
24 gambling, book-making shylocking, an armed car payroll heist.
25 He talked about the robbery of Lufthansa, other crimes,

Rebuttal - Argentieri

3735

1 murders involving Vincent Asaro, murder not involving Vincent
2 Asaro.

3 Vitale told you much the same thing. He came in,
4 remember he was being debriefed on an Air Force base and the
5 prosecutor started asking him questions about the body of
6 the -- a more recent murder. Vitale said why start there,
7 let's start at the beginning, let's start in 1975 and get it
8 out of the way.

9 The cooperators, all they can do is come in and tell
10 the truth because they don't know what other people are
11 telling us or what other information we have. How dumb would
12 that be; to put your entire life in jeopardy by deciding to
13 cooperate, losing the support of organized crime, literally
14 putting the life of you and your family in jeopardy and then,
15 coming in and lying. It's not happening. You should believe
16 these cooperating witnesses, let me be clear, because they are
17 corroborated by all of the other evidence in this case.

18 Gasper Valenti told you that when he last saw
19 Richard Eaton at After's he was eating shrimp scampi. He
20 didn't, by the way, say this defendant murdered Richard Eaton,
21 so if Gary is here to make Vincent Asaro look bad, very easy
22 to say that he committed the murder. But he doesn't because
23 he's telling you the truth. So, he says to you, I only met
24 him once, I saw him at After's he was eating shrimp scampi.
25 He had no way of knowing that we would be able to find, 40

Rebuttal - Argentieri

3736

1 some-odd years later, an autopsy report in which the medical
2 examiner, who has since died, said that Richard Eaton had
3 shrimp in his stomach he had eaten one hours before dying.
4 That is incredible cooperation.

5 And in the face of that, what does the Defense say?
6 They say well, the FBI didn't arrest Vincent Asaro in 2002 and
7 they didn't arrest him in 2007 and they didn't arrest him in
8 2012. It's a distraction. It's a distraction from all of the
9 other evidence in this case.

10 And the fact that the FBI built this case over
11 years, it's not just one cooperator Sal Vitale, it's not just
12 two cooperators Peter Zuccaro, it's not three cooperators.
13 It's all these cooperating witnesses and all the other lay
14 witnesses you heard from. That's evidence.

15 There's also this notion that we're somehow buying
16 their testimony, that there's an FBI pension plan. There's no
17 evidence of that. It's just not true. As to Sal Vitale and
18 the \$250,000, that's a lot of money. That's a lot of money.
19 He got it after he was cooperating for years and years and
20 years and had provided a lot of information.

21 He told you for the first seven or eight years of
22 his cooperation he was in jail and he received no money from
23 the FBI. He told you he got out, he went into Witness
24 Security. He told you it was awful. He couldn't get a job.
25 He tried every place that he could and finally the Marshals

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Rebuttal - Argentieri

3737

1 Service cut him off and he got that money because other money
2 had been forfeited as a result of his cooperation. It wasn't
3 a payment, a reward for his cooperation. But they say that to
4 you because they're trying to distract you, to make you angry
5 by throwing out the amounts of money because they don't want
6 you to look at this evidence.

7 Gary Valenti got \$178,000. That's the evidence at
8 this trial, over seven years. That's a lot of money, too. No
9 one's saying it's not. But if you break that down it's
10 something like 22, \$23,000 a year. That's not enough money,
11 it's not enough money to put your family in danger, to put
12 your life on the line, to risk it all by coming and making up
13 stories, to uproot your whole life.

14 Now, the Defense described Valenti, they said that
15 he was a liar, he's awful. You may not like him. He's
16 cheated and he's stolen and he's done bad things. But the
17 Government did not pick him. The defendant made him the star
18 of this trial by being his closest criminal associate for over
19 40 years.

20 Look at these pictures. They were together. Do you
21 remember the testimony of Agent Metts. It went on forever.
22 The man surveilled Gary Valenti and Vincent Asaro together,
23 day in and day out, over months. And I know that testimony
24 was hard to listen to and as it was happening, maybe you were
25 thinking we get the point, but that was the point we wanted

1 you to get, is that Gary Valenti knows this defendant best.
2 That's why the defendant hand-picked him to help him bury a
3 body and to carry out the Lufthansa score. And in none of
4 these pictures do you see these two men putting up fences,
5 working an honest day's pay. No. They're hanging out at the
6 social club discussing criminal activity.

7 The Defense also made much about all of these
8 inconsistencies in Gary Valenti's testimony. Look at the
9 testimony. It's just simply not true. It's a distraction.
10 There's no other evidence. They told you about Valenti's
11 denial he previously lied under oath at the trial of someone
12 named Midge. There is no evidence about this other than two
13 sentences in Agent Mininni's testimony. Valenti was asked
14 about it, he told you he testified in Midge's trial to help
15 Midge. That's something that he told the agents about. There
16 is no transcript or not one piece of other evidence which
17 shows that he lied at that trial.

18 Now, when Ms. Macedonio was talking about Cary
19 Whalen's testimony and the fact that he never described the
20 robbers as having a moustache, she stood up here at this exact
21 spot, less than an than an hour ago and said he never reviewed
22 those notes for accuracy, he didn't know if those notes were
23 right. But two sentences out of notes from Gary Valenti's
24 testimony, and that he must be lying. It's simply not true.
25 It's a distraction.

Rebuttal - Argentieri

3739

1 About the arson. He told you, they lit a ball and
2 they threw it into the club to set the club on fire. He also
3 told you straight out that After's didn't have a window. Now,
4 there is some report that says that maybe he said he threw it
5 through a window. Doesn't that sound to you like a
6 miscommunication? The man clearly testified that there was no
7 window. It's a distraction.

8 The same thing with FedEx. This FedEx, they make a
9 lot of one sentence out of a report that says that Gary
10 Valenti was involved in a Federal Express heist with Jimmy
11 Santos, Bobby Lino and Jerry Asaro. How is that inconsistent
12 when he testified before you, you read his testimony. He said
13 all of these people were involved in planning the heist. But
14 Jerry Asaro, in fact, once went and looked at the heist, but
15 didn't end up going on it. It's just, they're picking out
16 literally five sentences out of eight years of debriefings,
17 about 40 years of criminal activity.

18 They also say that this is an example of Gary piling
19 on. He says that with the attempted payroll robbery and he's
20 just putting him in things that he wasn't involved in.
21 Really? Is that the best that Gary Valenti can do is say that
22 he went to Vincent Asaro and said hey, I'm going to do this
23 robbery of this payroll truck, what do you think? And Vinny
24 says yeah, take my son. If he was just piling on, right,
25 wouldn't he have said -- there's no police report about this,

Rebuttal - Argentieri

3740

1 right, which they pointed out because no robbery happened.

2 That's why it's charged as an attempted robbery.

3 The door was being locked. Nobody says these guys were
4 geniuses, their plan was to hope that the door to the truck
5 was unlocked and then open it and rob the truck. The door was
6 locked, the plan was foiled, okay? It's not really the crime
7 of the century. But if he was just piling on, why wouldn't he
8 have said Vincent Asaro was in the car with them or in a car
9 nearby? He's telling you the truth about what happened. And
10 the truth is, by giving him permission to go do the robbery,
11 by telling him to take his son with him, he is aiding and
12 abetting that robbery and guilty of it just as if were sitting
13 in the car.

14 The same thing with the illegal gambling. They said
15 to you there's no evidence of the amount of money. That's not
16 true. Look at the testimony of Jose Estrella. I don't want
17 to belabor this, but it's in there. He said he had a limit of
18 \$45,000 a week, he said it went on for over 30 days. Those
19 are the elements of that offense and they have been met.

20

21 (Continued on following page.)

22

23

24

25

Summation - Argentieri

3741

1 (Continuing)

2 MS. ARGENTIERI: In light of the overwhelming
3 evidence of this trial that the defendant is guilty of the
4 Lufthansa heist, the defense asked you to believe that he is
5 not; and to do that they called Kerry Whalen, who identified
6 Angelo Sepe and Tommy DeSimone as the participants in the
7 robbery who were outside in the van. As interesting as Kerry
8 Whalen's testimony was, most of it was simply not credible.
9 If you look at his testimony he says he pulled up to a
10 building, he said he saw a dark van. He was a little
11 suspicious. He pulled in front with his high beams on, he got
12 a good look at the passenger, a so-so look at the driver.
13 This is straight out of his testimony from the trial at 3361.

14 He then proceeded to identify the passenger by a
15 photo and said: That's Angelo Sepe. He then told you that he
16 saw the photo and a description of the person in Newsweek.
17 That's the trial transcript at 3364 to 3365. He told you he
18 was reading all of the newspaper reports in the aftermath of
19 the heist, and that in sometime in March, the following year,
20 he saw that picture. Then he identified the driver as Tommy
21 DeSimone, who was a man who had a very prominent mustache.

22 We didn't treat him as if he were insane. We did
23 not. We asked questions, he answered them. If the defense
24 felt that he looked insane, that's up to them. The question
25 is what did you think of him? Did you find him credible?

Summation - Argentieri

3742

1 He was not credible. Think about his testimony,
2 compare it to the testimony of Rolf Rebmann, who arguably
3 interacted more with the men outside the van who told you that
4 he simply couldn't identify anyone. It's clear that Kerry
5 Whalen is using information he read from the newspaper. It
6 was dark. He was looking into a windshield. There would have
7 been a glare with high beams on. He was wearing glasses.
8 Glasses that were later knocked off. He had a hat pulled over
9 his head. He was shoved down. There was no way that he could
10 then pick out pictures of two men he had never met before.
11 From his own testimony you know that he is an individual who
12 is prone to exaggeration. This is his testimony: The driver
13 stuck a pistol way deep into my brain, my left eye; and with
14 my right eye I could see two bullets the size of submarine
15 torpedoes. I think that's enough said about that.

16 And on cross-examination he acknowledged he never
17 described the driver as someone being -- someone having a
18 mustache in the days after when he was interviewed. He
19 acknowledged that he tried not to look at the two men when he
20 interacted with them. And that he was not called to testify
21 at the prior trial of the inside man. He told you that when
22 Special Agent Mininni called him to ask him about his
23 experience as a victim of the Lufthansa robbery, he refused to
24 speak to him. Yet, when he took the stand here he told you he
25 was eager to be here and that it was an honor.

Summation - Argentieri

3743

1 He had been waiting 35 years, in his own words, to
2 make his statement, but you know why. You know that his ax,
3 he has an ax to grind and it is with the U.S. Attorney's
4 office, the FBI and even the Court. He told you that he was
5 mistreated by the FBI. He felt like a suspect and that didn't
6 feel good. And since then, he has gone on a public relations
7 campaign about the heist and about all of the different people
8 he feels have wronged him, including Loretta Lynch, including
9 Judge Ross. He routinely demonstrates outside the FBI, this
10 courthouse and the U.S. Attorney's house, wearing a sandwich
11 board.

12 In contrast to that, you have the testimony of
13 Gasper Valenti who is corroborated in every respect about the
14 details of the heist, details he could not have known unless
15 he was there. And I am not going to go through them because
16 Ms. Cooley really went through them in detail. But the yellow
17 Styrofoam he told you about that was in the boxes. Special
18 Agent Iannuzzi told you he found that Styrofoam in the van
19 when it was recovered. He told you that in order to get into
20 the terminal a door had to be rolled up and then he walked up
21 metal steps. That's exactly what Rolf Rebmann told you, he
22 rolled up the door and they walked up metal steps. Those are
23 details you would only know if you were there.

24 But just for a moment, just for a moment, put aside
25 the testimony of Gasper Valenti. Even without his testimony

Summation - Argentieri

3744

1 you can still convict the defendant of the Lufthansa heist.
2 You have the testimony of Sal Vitale who told you he drove Joe
3 Massino to meet this defendant. Massino went for a walk, he
4 saw the defendant hand him a case, and then when he got back
5 in the car Massino opened the case, there were gold chains
6 inside, and he said: This is from the Lufthansa heist. And
7 you know from Government Exhibit 403a that there was gold
8 jewelry.

9 You also have the testimony of Peter Zuccaro, right
10 after the robbery he's interacting with Frankie Burke.
11 They're criminals together, they commit crimes together. What
12 does Frankie Burke say? He says: I stole the van and I went
13 on the robbery and I drove it. He says: Gasper went for
14 Vinny.

15 You have the testimony of Anthony Ruggiano. His
16 father told him that he fenced jewelry that Vinny Asaro and
17 Jimmy Burke brought him from the Lufthansa heist right out of
18 their jewelry store.

19 The defendant is guilty. You have it from the
20 defendant, himself. I didn't even understand what was
21 happening when they were talking about the doorjams and
22 construction. Gasper Valenti told you he hid some of the
23 money in his house on Blake Street where his mother also lived
24 around the doorjams. That's not a construction job, you
25 remove a little wood, you stick something in there. You have

Summation - Argentieri

3745

1 the defendant acknowledging that that happened on tape,
2 Government Exhibit 250, it's a June 30th, 2012 recording. He
3 tells Gasper: You're a liar. You lied with the money with
4 your mother's house. You robbed the that money. And he
5 starts talking about Frankie Roder, and you know Frankie Roder
6 is someone else who held money after the Lufthansa heist. He
7 acknowledges it on tape. In the face of all of this evidence,
8 the defendant is asking you to believe that Gary Valenti is
9 just making this up, that he took the on persona of Angelo
10 Sepe. It just doesn't make any sense. If he were making it
11 up, why wouldn't he say he was one of the guys wearing the
12 masks inside? If everyone is dead and he can just say
13 whatever he wants, why isn't he saying that?

14 Why not just -- and why is he putting Vinny in the
15 crash car? There have been a bunch of arguments about the
16 fact that it didn't make sense that Vincent Asaro was in this
17 crash car with Jimmy Burke far away. First of all, if you
18 look at the map he's on a main thoroughfare, where I submit to
19 you the police would need to drive by if they were going to
20 get there, so they would be able to see the sirens.

21 Second of all, no one asked you to check your common
22 sense at the door. Okay, these guys are undertaking a very
23 risky robbery. Where are the two senior guys who helped plan
24 the robbery? Are they there? Are they putting their necks on
25 the line? No. They're nearby waiting and watching because

Summation - Argentieri

3746

1 they want their end. It makes complete sense that they were
2 waiting there.

3 There is also other evidence that corroborates the
4 testimony of Gary Valenti that really also went unaddressed.
5 The testimony of Johnny Tags, the testimony of Ron Cecchini,
6 they came here and they told you that they both held packages
7 in the time period after the Lufthansa heist. Johnny Tags
8 told you that he'd been in the defendant's club, that he had
9 gambled there, that he saw the defendant with Jimmy Burke
10 inside the club. And he told you that it was the defendant
11 who came and picked up the package from him. And he also told
12 you that Gary came to the house. I mean is this
13 quintessential Gary Valenti; he goes to the house to take
14 money out of the package and he gives Johnny Tags some money
15 from it, and that Johnny Tags's understanding was that
16 probably he didn't want the defendant to know about that.
17 That is compelling, compelling evidence that Gary Valenti is
18 telling the truth, that this defendant is guilty.

19 Hold him accountable. Let's talk about the murder
20 of Paul Katz. After three weeks of trial, 70 witnesses, now
21 we're hearing that it was not actually the defendant who
22 killed Paul Katz, but maybe it was Joey Allegro, maybe it was
23 Gary Valenti and Joey Allegro, we're not sure. What is the
24 evidence of that? In the face of a mountain of evidence about
25 the defendant's participation in the murder of Paul Katz, what

Summation - Argentieri

3747

1 do they ask you to rely on?

2 One moment.

3 (Pause.)

4 This is Defense Exhibit J.

5 (Exhibit published.)

6 They ask you to rely on the fact that Paul Katz was
7 going to meet someone named Joey Allegro on the night that he
8 went missing. Now, the judge has given you a limiting
9 instruction on this report, and it basically says that you
10 can't rely on this report in finding that Joey Allegro went to
11 meet Paul Katz that night. This is a complete distraction.
12 It is just a distraction. There is no evidence about who Joey
13 Allegro is. When Gasper Valenti was asked who was Joey
14 Allegro, he said: I don't know. No one else came forward to
15 prove that he was lying when he said that. There was
16 literally no other evidence at the trial who Joey Allegro was.
17 And this report does not refute any of the evidence presented
18 by the government about how Paul Katz died and why. It's not
19 important to the charges, which do not allege that it was the
20 defendant that got him out of his apartment, but instead
21 charge him with murdering Paul Katz in cold blood and hiding
22 his body away from the world and from his family. And to the
23 extent that Joey Allegro was a criminal associate of Paul
24 Katz's, you have heard plenty of testimony at this trial about
25 how organized crime uses people who are close to the victim to

Summation - Argentieri

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1 lure them out of their house. Sal Vitale testified about
2 that. Anthony Ruggiano testified about how he lured his
3 brother-in-law to meet with people who killed him.

4 In contrast to all of the speculation, the
5 government presented compelling and significant evidence of
6 the defendant's guilt and his role in the murder of Paul Katz
7 and the coverup. Gary Valenti testified that he had never met
8 Paul Katz, but he had been to the warehouse, which was in
9 South Ozone Park, and that Jimmy Burke's crew, Tommy DeSimone,
10 Carl from Robert's Lounge, he saw them all there and they
11 would go there and unload stolen goods from trucks. Trucks
12 much like Larry Katz, Paul Katz's son, testified about. And
13 you saw in Government Exhibit 407 that when the defendant was
14 arrested Carl was there and Tommy DeSimone was there. And
15 this is shortly before Paul Katz disappears.

16 (Exhibit published.)

17 Then the defendant tells them: I need a place to
18 have a meeting. He's got these houses on 102nd Road. They
19 are almost complete. And the defendant shows up with Jimmy
20 Burke and he hears banging and pounding in the basement. They
21 are breaking up the concrete, and that later he's asked to
22 cover the hole and the defendant tells him that he and Jimmy
23 Burke killed Paul Katz because he was a rat, because he was
24 cooperating.

25 And Gary Valenti told you things that are completely

Summation - Argentieri

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1 corroborated. He told you that the concrete in the basement
2 was set with some type of metal or rebar. He told you that
3 when at this defendant's direction he moved the body with the
4 defendant's son Jerry, he saw bones, he saw hair, he saw
5 pieces of concrete, he saw a material like corduroy, and he
6 saw rebar.

7 How do you know that he is telling the truth? If
8 you look at the missing person's report.

9 (Exhibit published.)

10 Paul Katz was reported missing last seen wearing a
11 green corduroy jacket. You know that when the hole was
12 excavated by the FBI they found pieces of fabric, dark fabric.
13 And Gary Valenti also told you that he saw a material like
14 corduroy. You know also that also found in the hole by the
15 FBI were pieces of flooring that would be consistent with the
16 body being dug up. This is Government Exhibit 710(d),
17 Government Exhibit 710h, pieces of concrete, just like Gary
18 Valenti said he saw.

19 You heard from Special Agent Mike Byrnes. This is
20 142k, that what the concrete looked like was consistent with
21 what Gasper Valenti described.

22 (Exhibit published.)

23 You know that 142r, what was found at the base of
24 the hole was a hand as if a body had been laid in it sort of
25 turned over.

Summation - Argentieri

3750

1 (Exhibit published.)

2 And what was right beneath that hand? 142u. See
3 this, this is a dark fabric (indicating).

4 (Exhibit published.)

5 You also heard from an expert, from Brad Adams who
6 told you that it was his testimony, he believed a body had
7 been in that hole and had been removed and they weren't able
8 to get all of the pieces out. And so that naturally small
9 parts had been left over and left behind. You also saw --
10 Gary Valenti told you the defendant said: I dented a pipe, a
11 water pipe. 142g, the FBI was able to find the exact dented
12 water pipe.

13 You heard from Frances Rue, the DNA expert, that the
14 remains found in that hole were 1,000 percent -- to be clear
15 for the record she said 99.95 percent -- the remains of Paul
16 Katz. You know that the defendant is guilty of this murder.
17 You heard that last recording where Valenti told the
18 defendant: The Feds are all over Liberty Avenue. And most
19 respectfully, while Ms. Macedonio's reading of the transcript
20 was interesting, you listened to it yourself. This is
21 Government Exhibit 244.

22 (Exhibit published.)

23 I am talking about Liberty Avenue? Where? Silence.

24 You listen to yourself, that silence is deafening.

25 You know what I mean?

Summation - Argentieri

3751

1 And then the defendant doesn't say: No, I don't
2 know what you mean. He says: No, I don't know what you mean.
3 And when he says it, it is very clear that he does, in fact,
4 know exactly what Gasper Valenti means. Don't take my word
5 for it.

6 By the way, what did Gary Valenti say the
7 defendant's face looked like in that moment; a look of hatred,
8 a look of disgust. You'd have to be with someone to know that
9 look. How could you do this to me? That was the look. You
10 listen to that recording, you can feel that energy in the car.

11 Then what does the defendant do? He leaves the
12 diner where he's meeting with Gary Valenti, he changes cars,
13 and less than ten minutes later he is driving by the FBI
14 search location. And the defendant says he wasn't crouched
15 down in the -- I mean he wasn't crouched down in the car, he
16 wasn't hiding. He was in someone else's car being driven.
17 That's pretty disguised. He doesn't just go once, he circles
18 back to take a second look. And that, ladies and gentlemen,
19 is exactly what you would do if you found out that the jig was
20 up, that your cousin was cooperating and that your most
21 serious crime was about to be discovered. The FBI is
22 searching for a body where you buried it.

23 And Ms. Macedonio is right, we're not mind-readers,
24 but that day a good number of FBI agents were following
25 Mr. Asaro, so we don't need to be mind-readers because you

Summation - Argentieri

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1 know where he went next? He went to see his son, Jerry Asaro,
2 still very much alive. The only person alive who would be
3 affected if the FBI found Paul Katz's remains. The only other
4 person alive who had been involved in concealing the body.

5 You should find the defendant guilty of the murder
6 of Paul Katz and of the coverup. The government has
7 absolutely met its burden.

8 Now, in an attempt to distract you from this other
9 evidence, the defendant argues that certain of these crimes
10 are just family business. They're just his cousins, it's just
11 money in between cousins. That is absurd. It flies in the
12 face of reason and common sense. You are jurors and you come
13 here with your everyday experiences and your everyday lives
14 and common sense. You don't have to put that aside when
15 you're deliberating.

16 They say to you that Zaffarano, John Zaffarano, he's
17 not a loanshark. This isn't a loansharking victim. It's not
18 an extortion, no one forced him. He wasn't afraid, he told
19 you that. Ask yourselves, why would he pay that money? Why
20 would he give the defendant and Matty the Horse Ianniello over
21 a million dollars out of his pocket? You saw him testify. He
22 didn't want to be here. He told you that. He didn't want to
23 hurt this defendant. But despite that, he completely
24 corroborated what Gary Valenti told you, that after his father
25 died the defendant came to him and said that his father owed

Summation - Argentieri

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1 money. He even reluctantly, very reluctantly admitted to you
2 that he didn't believe that his father actually still owed the
3 money, but he paid it. He paid it back long after it was due,
4 over \$250,000 on a 250,000-dollar loan that does not exist.
5 And he told you when the defendant couldn't pay, he would call
6 him, he would jump up and down and he would yell. And then he
7 borrowed additional money from him. He told you that he was
8 called to a meeting with Matty the Horse, who you know is a
9 Genovese captain, because Matty the Horse was unhappy with the
10 money that he was getting from the sale of the properties.
11 And that after that meeting, he paid him \$750,000. And why
12 did he pay it? Because the defendant told him this isn't
13 something you mess around with, organized crime, Matty the
14 Horse. And that the defendant got \$400,000 for negotiating
15 that settlement. And another 250 after he moved to Florida.

16 What is the defendant's response to that testimony?
17 Oh, you did it willingly, right? And you and the defendant
18 just lent money back and forth and nobody kept score?
19 Somebody kept score. This defendant. It's incredible that
20 you would pay back that much money on a debt you did not
21 believe existed. It's not true. You know who Johnny
22 Zaffarano's father was, he was Mickey Zaffarano. His father's
23 a captain in the crime family. He knew of how it worked.
24 This was crime family business, not some other business. And
25 in the moments when John Zaffarano was no longer protected in

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Summation - Argentieri

3754

1 the moments after his father's death, this defendant took
2 advantage and now he is trying to hide behind those family
3 relationships. The defendant is guilty of making these --
4 collecting on the extortion extension of credit, that's
5 Racketeering Act One, that's part of the loansharking, and
6 he's guilty of Racketeering Act Eight, which is the money that
7 he paid John Zaffarano and the defendant from the sale of
8 those properties. It's a shakedown plain and simple. It's a
9 crime even if they are related and even if the victim denies
10 it. You know the truth.

11 You also heard from other victims of this defendant.
12 Victims who were not related to him or beholden to him
13 emotionally. Remember Guy Gralto? His testimony went
14 unchallenged. Unchallenged. He came here and he told you he
15 paid protection money from his auto body business to the
16 defendant. He told you just like Zaffarano, he made payments
17 at Asaro's club. He told you he was afraid Vinny Asaro would
18 hurt him. He told you one time Asaro drove his car through
19 his fence, another time he smacked him, and he told you at one
20 meeting the defendant said that when he was done with him his
21 own mother wouldn't recognize his body.

22 And in the face of that testimony, which went
23 unchallenged, they say this had nothing to do with the crime
24 family. It had everything to do with the crime family. It is
25 the definition of crime family business. The what was Gralto

Summation - Argentieri

3755

1 paying for? Protection. Protection from what? Protection
2 from organized crime. He's previously been robbed by another
3 crime family crew. It is -- this is the very essence of how
4 organized crime makes money. The defendant used his status in
5 the crime family to provide Galto with protection.

6 Now, during this trial you heard from Carmine
7 Muscarella. Remember Mr. Muscarella? Skippy. He was caught
8 on tape negotiating with the defendant about how much money he
9 had to pay up. He was called by the defense. He came here
10 and he was prepared to tell you that it was Gary Valenti who
11 wanted all this money from him. But you know more than him.
12 You do. You listened to the recordings that led Gary Valenti
13 to go see Carmine Muscarella. You know that it's this
14 defendant who told him to go see him and how to go see him.
15 Remember, he said: Just go walk in on him, don't call ahead.
16 Skippy took that stand, he was trying to help the defendant
17 and he did what he could. He did what he could, but he was
18 caught on tape. And when he was confronted with the recording
19 on which the defendant told him to pay Valenti, he tried to
20 explain that when he got on the phone with the defendant, the
21 defendant told him: Gary's Dearie's Godson and that somehow
22 changed everything. That is not credible; and more than that,
23 it's not true. How do you know it's not true? Because you
24 have the benefit of the recordings.

25 This is Government Exhibit 205. This is after the

Summation - Argentieri

3756

1 meeting at Carmine Muscarella's place of business. And the
2 defendant tells him what he said to him on the phone. He
3 says:

4 You know, he didn't want to do nothing and I told
5 him, I said, that's between you and him. You promised it to
6 him.

7 (Exhibit published.)

8 He, basically, said pay the money. There's nothing
9 about him being Dearie's Godson. It's incredible that he
10 wouldn't have known about that before that.

11 What was most -- Carmine Muscarella testified that
12 for years, for years Gary Valenti attempted to get money from
13 that house, but after a 30-second conversation with this
14 defendant he agreed to pay. What is most compelling about his
15 testimony is that he refused to acknowledge on the stand under
16 oath, even when faced with the recording, that it was the
17 defendant who told him how much money he had to pay. Remember
18 that? Remember when I asked him and he's like: Uh, I don't
19 remember the whole conversation. Lucky for us, it's on tape.
20 This is Government Exhibit 204, page 15. This is Carmine,
21 he's on the phone with Vincent Asaro:

22 (Exhibit published.)

23 Okay , all right. If I split it in half, you're
24 okay, you're okay with that?

25 It was the defendant who decided how much money he

Summation - Argentieri

3757

1 had to pay, and then he paid it. And that tells you
2 everything you need to know about Carmine Muscarella who, as
3 he sat here, had no idea that it was this defendant that kept
4 \$2500 of the \$3,000 he initially gave him. And then less than
5 two weeks later had the audacity to reach back into his pocket
6 for another 2500. You know more than him. And you know what,
7 you don't need Carmine Muscarella to tell you that he was
8 afraid of this defendant. He acknowledged to you that he knew
9 about the defendant's organized crime ties. The defendant
10 said to you, he was -- he humbled himself to go to Carmine
11 Muscarella and ask for that money. That wasn't being humble,
12 it was hubris, to take that money from a hard-working man and
13 a relative. Look at Government Exhibit 212, what does the
14 defendant say about Carmine Muscarella? This is page 3.

15 (Exhibit published.)

16 You think it looks promising with this kid? You
17 know, he's really timid with me, right?

18 (Continued on the following page.)
19
20
21
22
23
24
25

Summation - rebuttal - Argentieri

3758

1 MS. ARGENTIERI: (Continuing) It's the defendant
2 admitting he knew he was intimidating Carmine Muscarella and
3 that's why Carmine Muscarella paid this money. There can be
4 no dispute about it. It was a shakedown and the defendant is
5 guilty of it.

6 And just as you're deliberating, the defendant asked
7 you to keep a couple of things in mind. A couple of things I
8 want you to keep in mind. Think of how this defendant treated
9 other wiseguys. He yelled and screamed at them. Remember?
10 Remember, the defense said remember when he said he was going
11 to lose his button? That's how he treated other people in the
12 life. So you know that he treated people who didn't have that
13 protection even worse. You also know about his reputation.

14 Government Exhibit 234. There's a recording where
15 someone is parked in the neighborhood in the wrong spot. And
16 he, the defendant, and Gasper Valenti are, like, listening to
17 Adele in the car and all of the sudden, the defendant goes
18 completely crazy. What does he yell? He tells these two
19 random men out in the street. You tell them Vincent Asaro
20 said it. That's because his name means something in the
21 neighborhood. And it means organized crime. It means he's a
22 tough guy and it means people are afraid of him.

23 This is a simple case in many ways. I know what
24 you're thinking. After all this evidence, you are going to
25 get up here and say it's a simple case but in many ways, it

Summation - rebuttal - Argentieri

3759

1 is. It's a tale as old as time. This is a story about
2 fathers and sons. It's about tradition. It's about family.
3 But for this defendant and his father and his son, family
4 traditions go beyond how to string a fishing line and watching
5 football on Sunday. The crime family is their family. And
6 it's traditions and even more strongly held. Omerta. Death
7 before dishonor. The mafia life. The family motto is quite
8 literally inked into their skin. You saw the photos. On
9 Vincent Asaro's arm, death before dishonor. On his son's leg.

10 Death before dishonor. Think about what those words
11 mean. Death before dishonor in yourself, the life, the mafia.
12 The defendant has that inked on his skin. He will go to his
13 grave marked with those words. So closely held is that
14 belief. And because of that motto, because of that creed,
15 there is a father missing here today.

16 You heard from a son, now a man who was forced to
17 make his own traditions after his father disappeared, after
18 his father was murdered for cooperating. The defendant
19 strangled Paul Katz to death with Jimmy Burke for cooperating
20 and violating his sacred code. You heard the testimony of the
21 experts that recovered the pieces of Paul Katz that remained
22 decades after his disappearance, that he was found in a hole
23 in a house in Queens which was where Burke and defendant met
24 Valenti after killing him, a house that was still owned by
25 Burke, by Burke's family at the time, the remains were found

Summation - rebuttal - Argentieri

3760

1 and after 44 years, Paul Katz was returned to his family in
2 pieces.

3 The mafia is a treacherous life. It is a dangerous
4 life. No one knows what it requires more than this defendant.
5 You have to be ruthless. You have to take what you want from
6 whoever you need to. Blood family, friend, none of it
7 matters. It's money and the mafia and that's what counts. In
8 the defendant's own words, he spoke about another wiseguy, a
9 guy he felt didn't live the life.

10 This is Government Exhibit 236. This tells you all
11 you need to know about this defendant.

12 Never did a fucking piece of work in his entire
13 life. Never did nothing. He was in this life, and that was
14 it, by name only. Never did a thing, never stole, never had
15 to steal. A lot of guys like that, God bless them. My whole
16 life I had to steal. I had to do everything. I had to do
17 everything. He never cracked an egg in his life. He never
18 did nothing illegitimate in his life. Never, in his whole
19 miserable life.

20 What is he saying here? Never did a fucking piece
21 of work in his life. That means never killed someone, not
22 like me. Never did nothing. He was in this life by name
23 only, not like me. He never stole, he never had to steal, not
24 like me. I had to do everything. He never cracked an egg in
25 his life, not like me.

Side Bar

3761

1 The defendant sits here for the choices he has made
2 throughout his whole life. Hold him accountable for his
3 lifetime of crime, of victimizing others, of taking what was
4 not his to take, money, property, Paul Katz's life, his
5 future. He took those things from people who could not defend
6 themselves, everyday people who feared them.

7 Find the defendant guilty of the charged crimes
8 because the government has proven his guilt beyond a
9 reasonable doubt and because the time has come for him to be
10 accountable. Thank you.

11 THE COURT: Ladies and gentlemen, your lunch is
12 here. Enjoy it. If we could resume in a half hour at about
13 quarter of 2:00, then I will charge you on the law.

14 (Jury exits.)

15 THE COURT: I am about to ask Dennis to duplicate
16 the charge for the jurors so before we do that, are there any
17 last minute changes?

18 MS. MACEDONIO: May we approach? Can we approach?

19 THE COURT: Yes.

20 (The following occurred at side bar.)

21 MS. FERRONE: Judge, in an earlier version and
22 consistent with the request by the defense, we had asked for
23 inconsistent statement charge and I guess a version or two
24 ago, we were notified that it was taken out. In the course
25 of -- it was removed from the current draft.

CMH

OCR

RMR

CRR

FCRR

Side Bar

3762

1 THE COURT: Right. I discussed it before I removed
2 it.

3 MS. MACEDONIO: You did.

4 MS. FERRONE: Absolutely. But in the course of, I
5 think, preparing the closing argument and reviewing the
6 transcripts, we feel that the instruction is indeed
7 appropriate.

8 Ms. Macedonio highlighted a few examples in her
9 closing where Mr. Valenti had testified to one thing and then
10 through the agents' notes, we showed there was a prior
11 inconsistent statement so we simply reiterate the request for
12 the instruction which I have right here, two paragraphs to be
13 placed back. I made it yellow.

14 THE COURT: Well, we have it in our computer but
15 does the government have any objection?

16 MS. ARGENTIERI: I just want to see it.

17 (Pause.)

18 MS. ARGENTIERI: That's fine.

19 THE COURT: Okay. We'll put it back in.

20 MS. MACEDONIO: Did you send an e-mail this morning?

21 MS. ARGENTIERI: Give me one second. I'm sorry.

22 I think this morning, we found a couple of typos in
23 the verdict sheet which I e-mailed to Petey which I think he
24 got. It was just in the verdict sheet.

25 MS. MACEDONIO: I didn't see it.

Side Bar

3763

1 THE COURT: This is the typos.

2 MS. ARGENTIERI: It said "extortionate."

3 THE COURT: I saw that too.

4 MS. ARGENTIERI: And then instead of the way we
5 identified it, it said --

6 THE COURT: Okay. They're fixed.

7 MS. ARGENTIERI: They're both fixed?

8 THE COURT: Well, look at the current version.

9 MS. ARGENTIERI: I will.

10 THE COURT: I mean this is the end because once he
11 duplicates it --

12 MS. ARGENTIERI: I trust Petey more than I trust
13 myself right now so if he says it's fixed, that's good enough
14 for me.

15 MS. MACEDONIO: Thank you, Judge.

16 THE COURT: Okay.

17 MS. MACEDONIO: A quarter to?

18 THE COURT: Yes.

19 (In open court; side bar ends.)

20 THE COURT: Let me ask this. Dennis has already
21 duplicated them. Would you have any problem if I read it in
22 my charge to the jury but if it's not in the written version?

23 MS. MACEDONIO: Are they getting the charge?

24 THE COURT: I'm sorry?

25 MS. MACEDONIO: Are they getting the charge?

3764

1 THE COURT: Yes. It's just too much.

2 MS. MACEDONIO: Can we just insert a page and let
3 them understand.

4 THE COURT: All right. We will insert it. Okay.

5 MS. MACEDONIO: Thank you.

6 MS. ARGENTIERI: Judge, what time?

7 THE COURT: A quarter of 2:00.

8 MS. ARGENTIERI: Great.

9 (Luncheon recess.)

10 (Continued on next page.)

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- Charge -

3765

1 THE COURT: Are we all ready?

2 MS. GERDES: We are, Judge.

3 (Jury entering.)

4 THE COURT: Please be seated.

5 Ladies and gentlemen, I'm going to try to do this
6 without a microphone, if you can hear me.

7 Can you hear me?

8 JURORS: Yes.

9 THE COURT: If at any point, you have any
10 difficulty, raise your hand, and I will use the mic, okay.

11 Now, that the evidence in the case has been
12 presented and the attorneys for the government and the
13 defendant have concluded their closing arguments, it is my
14 responsibility to instruct you as to the law that governs this
15 case. My instructions will be in three parts.

16 First, I will instruct you regarding the general
17 rules that define and govern the duties of a jury in a
18 criminal case.

19 Second, I will instruct you as to the legal elements
20 of the crimes charged in the indictment, that is, the specific
21 elements that the government must prove beyond a reasonable
22 doubt for you to find the defendant guilty.

23 Third, I will instruct you as to some general rules
24 regarding your deliberations following these instructions.

25 To begin with, it is your duty to find the facts

- Charge -

3766

1 from all of the evidence in this case. You are the sole
2 Judges of the facts. It is, therefore, for you and you alone
3 to pass upon the weight of the evidence, to resolve such
4 conflicts as may have appeared in the evidence, and to draw
5 such inferences as you deem to be reasonable and warranted
6 from the evidence. With respect to any question concerning
7 the facts, it is your recollection of the evidence that
8 controls.

9 You must apply the law in accordance with my
10 instructions to the facts as you find them. While the lawyers
11 may have commented on some rules of law, you must be guided
12 only by what I instruct you about them. You must follow all
13 the rules as I explain them to you. You may not follow some
14 and ignore others. Even if you disagree or do not understand
15 the reasons for some of the rules, you are bound to follow
16 them.

17 The fact that this prosecution is brought in the
18 name of the United States government does not entitle the
19 government to any greater consideration than the defendant.
20 By the same token, the government is entitled to no lesser
21 consideration. The parties, the government and the defendant,
22 are equal before this Court, and they are entitled to your
23 equal consideration. Neither the government nor the defendant
24 is entitled to any sympathy or favor.

25 The indictment filed against the defendant is the

- Charge -

3767

1 means by which the government gave notice to the defendant of
2 the charges against him and brought him before the Court. The
3 indictment is an accusation and nothing more. The indictment
4 is not evidence, and you are to give it no weight in arriving
5 at your verdict. The defendant, in response to the
6 indictment, pleaded, "not guilty". The defendant is presumed
7 to be innocent unless the government proves his guilt beyond a
8 reasonable doubt. That presumption alone, unless overcome, is
9 sufficient to acquit the defendant. That presumption is
10 overcome only if you, the jury, decide unanimously that the
11 government has proven the defendant to be guilty beyond a
12 reasonable doubt.

13 Since the law presumes a defendant to be innocent,
14 the burden of proving the defendant's guilt beyond a
15 reasonable doubt is on the government throughout the trial.
16 The defendant never has the burden of proving his innocence,
17 or producing any evidence at all. If the government does not
18 meet its burden of proving beyond a reasonable doubt that the
19 defendant is guilty, you must find the defendant not guilty.

20 Proof "beyond a reasonable doubt" does not mean
21 proof beyond all doubt. It is not necessary for the
22 government to prove the guilt of the defendant beyond all
23 possible doubt. The test is one of reasonable doubt.

24 A reasonable doubt is a doubt based upon reason and
25 common sense, the kind of doubt that would make a reasonable

- Charge -

3768

1 person hesitate to act. Proof beyond a reasonable doubt must,
2 therefore, be proof of such a convincing character, that a
3 reasonable person would not hesitate to rely and act upon it
4 in the most important of his or her own affairs.

5 A reasonable doubt, however, is not a doubt that
6 arises out of whim or speculation. A reasonable doubt is not
7 an excuse to avoid the performance of an unpleasant duty.

8 If, after a fair and impartial consideration of all
9 the evidence in the case, you can honestly say that you have
10 such a doubt, based on all the evidence or lack of evidence in
11 the case, as would cause prudent persons to hesitate to act in
12 matters of importance in their lives, then you have a
13 reasonable doubt. In that event, it is your duty to acquit
14 the defendant.

15 If on the other hand, after a fair and impartial
16 consideration of the evidence, you can honestly say that you
17 have such an abiding belief in the guilt of the defendant that
18 you would be willing to act upon a similarly strong conviction
19 in the most important matters in your own lives, then you have
20 no reasonable doubt, and, in that circumstance, you should
21 convict.

22 I will now instruct you as to what evidence is and
23 how you should consider it. The evidence which you are to
24 consider in deciding the facts in this case comes in several
25 forms:

- Charge -

3769

1 Sworn testimony of witnesses, both on direct and
2 cross examination, regardless of who called the witness, is
3 evidence.

4 Exhibits, including physical items, that have been
5 received into evidence by the Court, are evidence.

6 Facts to which the lawyers have agreed or stipulated
7 are evidence. When the attorneys on both sides "stipulate",
8 that is, agree to the existence of a fact, you the jury may
9 accept the stipulation and consider the fact as proven.

10 Certain things are not evidence, and are to be
11 disregarded by you in deciding the facts:

12 Arguments or statements by lawyers are not evidence.

13 Questions put to the witnesses are not evidence.

14 Objections to questions or to offered exhibits are
15 not evidence. In this regard, I instruct you that attorneys
16 have a duty to their clients to object when they believe
17 evidence should not be received. Therefore, you should not be
18 influenced by the objection or by the Court's ruling on it.
19 If the objection was sustained, ignore the question and any
20 answer that followed. If the objection was overruled, treat
21 the answer like any other answer.

22 Testimony that has been excluded, stricken, or that
23 you have been instructed to disregard is not evidence and must
24 be disregarded.

25 Some of the evidence in this case was admitted only

- Charge -

3770

1 for a limited purpose. You must follow my limiting
2 instructions that I gave you. If evidence was admitted for a
3 limited purpose, you must consider it only for that purpose
4 and not for any other purpose.

5 Some of the exhibits that have been admitted as
6 evidence contain dark blocks indicating that information that
7 had been on the document has been deleted. We call such a
8 deletion from a document a redaction. All of these redactions
9 have been done at the Court's direction. You are not to
10 consider what the redacted portions of the documents might
11 have said or attach any significance at all to the redaction.
12 Most importantly, you are not to draw any inferences for or
13 against any party from the fact that I have ordered that a
14 document be redacted.

15 Obviously, anything you may have seen or heard
16 outside the courtroom is not evidence.

17 Nothing I have said or done should be used by you in
18 inferring innocence or guilt. I have no view of the guilt or
19 innocence of the defendant.

20 There are, generally speaking, two types of evidence
21 from which you may properly find the truth as to the facts.
22 One is direct evidence, such as the testimony of an eye
23 witness to an event. The other is indirect or circumstantial
24 evidence. This is the proof of a chain of circumstances
25 pointing to the existence or nonexistence of certain facts.

- Charge -

3771

1 A simple example of circumstantial evidence would be
2 the following: If you were to come to court on a bright sunny
3 day and then, after several hours in this courtroom, with the
4 window shades drawn, you were to see people entering from the
5 rear, one wearing a wet rain coat and the next shaking a wet
6 umbrella, you might infer from these circumstances, without
7 yourselves every going outside or even looking out a window,
8 that it had rained while you were here in court.

9 So, in a trial, you are permitted to draw, from
10 facts that you find have been proven such reasonable
11 inferences or conclusions as seem justified in light of your
12 experience and common sense. The law makes no distinction
13 between direct and circumstantial evidence. You may consider
14 both. What the law does require is that, before a defendant
15 is convicted of a crime, a jury be satisfied of his guilt
16 beyond a reasonable doubt based on its assessment of all of
17 the evidence in the case.

18 Your verdict must be based solely upon the evidence
19 developed at trial, or the lack of evidence. It would be
20 improper for you to consider, in reaching your decision as to
21 whether the government sustained its burden of proof, any
22 sympathy or favor for one side or the other, or any personal
23 feelings that you may have about the defendant's race,
24 religion, national origin, ethnic background, gender or age.
25 All persons are entitled to the presumption of innocence.

- Charge -

3772

1 It would be equally improper for you to allow any
2 feelings that you might have about the nature of the crimes
3 charged to interfere with your decision making process. To
4 repeat, your verdict must be based exclusively upon the
5 evidence or the lack of evidence relating to the crimes
6 charged in this case. The question of possible punishment is
7 also of no concern to the jury, and it should not, in any
8 sense, enter into or influence your deliberations. The duty
9 of imposing sentence rests exclusively upon the Court. Your
10 function is to weigh the evidence in the case and to
11 determine, solely upon the basis of the evidence, whether or
12 not the defendant is guilty beyond a reasonable doubt of each
13 crime charged in the indictment.

14 You have heard testimony of several witnesses and
15 watched the introduction of other evidence. The fact that one
16 party called more witnesses and introduced more evidence than
17 the other, does not mean that you should necessarily find the
18 facts in favor of the side offering the most witnesses. You
19 are tasked with looking at all the evidence, and you have to
20 decide which witnesses to believe and which facts are true.
21 You should keep in mind that the burden of proof is always on
22 the government and the defendant is not required to call any
23 witnesses or offer any evidence, since the defendant is
24 presumed innocent.

25 Although the government bears the burden of proof,

- Charge -

3773

1 and although a reasonable doubt can arise from lack of
2 evidence, I instruct you that the law does not require the
3 government to call as witnesses all persons who may appear to
4 have some knowledge of the matters at issue in this trial.
5 Nor does the law require that all things mentioned during the
6 course of the trial be are produced as exhibits.

7 The law further does not require that any particular
8 investigative techniques be used by law enforcement
9 authorities to uncover or prosecute crime. You have heard
10 evidence in the form of video and audio recordings of
11 conversations that were obtained without knowledge of some or
12 all of the parties to those conversations. You also have seen
13 and heard evidence obtained pursuant to court-authorized
14 search warrants and court-authorized wiretap warrants. All of
15 this evidence was obtained lawfully. The use of these
16 procedures to gather evidence is lawful and the government has
17 the right to use such evidence in this case. Law enforcement
18 techniques are not your concern.

19 Your concern is to determine whether or not, based
20 upon all the evidence presented in the case, the government
21 has proven that the defendant is guilty beyond a reasonable
22 doubt.

23 The defendant has elected not to testify in this
24 case. Under our constitution, a defendant in a criminal case
25 has no obligation to testify or to present any evidence

- Charge -

3774

1 because, as I have discussed, it is the government's burden to
2 prove guilt beyond a reasonable doubt. The defendant is never
3 required to prove his innocence nor is he required to produce
4 any evidence at all. No adverse inference may be drawn
5 against the defendant because he did not take the witness
6 stand, and you must not consider this fact against the
7 defendant in any way during the course of your deliberations.

8 As I mentioned earlier, you are the sole Judges of
9 the credibility of the witnesses and the weight that their
10 testimony deserves. In determining whether a witness speaks
11 the truth, you may consider the appearances and conduct of the
12 witness, the manner in which the witness testified, the
13 character of the testimony given, and any evidence contrary to
14 the testimony given.

15 You should carefully scrutinize all of the testimony
16 given, the circumstances under which each witness has
17 testified, and any other matter in evidence which tends to
18 indicate whether to believe a witness. Consider each witness'
19 bias, prejudice, hostility, interest and partisanship with
20 respect to the prosecution or defense of the case, and the
21 witness' demeanor while on the stand.

22 Inconsistencies or discrepancies in the testimony of
23 a witness, or between the testimony of different witnesses,
24 may or may not cause you to discredit a witness' testimony.
25 Two or more persons witnessing an incident or transaction may

- Charge -

3775

1 see or hear it differently, and innocent mis-recollection like
2 failure of recollection, is not uncommon. In weighing the
3 effect of a discrepancy, consider whether it pertains to a
4 matter of importance or to an unimportant detail, and whether
5 it results from innocent error on one hand, or intentional
6 falsehood on the other hand.

7 The testimony of a witness may be discredited or
8 impeached by showing that the witness previously made
9 statements which are inconsistent with the witness' present
10 testimony. It is your job to determine the weight, if any, to
11 be given to all or part of the witness-- all or part of the
12 testimony of a witness who has been impeached by prior
13 inconsistent statements.

14 If you find that a witness made such a statement,
15 you may consider that fact in your assessment of the witness'
16 credibility. In other words, you may consider whether or not
17 you believe the witness or accept his or her testimony in
18 light of the prior inconsistent statement. In making this
19 determination, you should consider the importance of the
20 matter to which the statement related. If you find that the
21 matter is relatively trivial, you may decide not to attach
22 much significance to the inconsistency. On the other hand, if
23 you find that the matter to which the prior inconsistent
24 statement related is important, you may decide that it casts
25 substantial doubt on the witness' credibility.

- Charge -

3776

1 In this case, you have heard the testimony of law
2 enforcement agents and government employees. The testimony of
3 these witnesses should be evaluated in the same manner as the
4 testimony of any other witness. The fact that a witness is a
5 law enforcement officer or government employee does not
6 justify according that witness' testimony more or less
7 credence than the testimony of any other person. You should
8 evaluate the testimony of law enforcement witnesses and of
9 government employee witnesses in the same manner as you would
10 the testimony of any other witness, using all of the tests of
11 credibility that I have discussed with you. It is your
12 decision, after reviewing all of the evidence, whether to
13 accept the testimony of a witness, and to give it whatever
14 weight, if any, it deserves.

15 In this case, you have also heard expert witness
16 testimony. An expert is a witness allowed to express an
17 opinion on matters about which he or she has special
18 knowledge, and training. Expert testimony is presented to you
19 on the theory that someone who is experienced in a particular
20 field may assist you in understanding the evidence or in
21 reaching an independent decision about the facts. In weighing
22 expert testimony, you may consider the expert's
23 qualifications, the opinion given, the witness' reasons for
24 testifying, as well as the other considerations that
25 ordinarily apply when you are deciding whether or not to

- Charge -

3777

1 believe a witness. You may give expert testimony whatever
2 weight, if any, you find it deserves in light of all the other
3 evidence before you. You should not, however, accept a
4 witness' testimony merely because he is an expert in a field.
5 Nor should you substitute it for your own reason, judgement
6 and common sense. The determination of the facts in this case
7 rests solely with you.

8 You have also heard testimony from witnesses who
9 testified that they were actually involved in criminal conduct
10 charged, or related to the charges in the indictment. These
11 witnesses are testifying here pursuant to agreements with the
12 government which provide, in part, that their cooperation will
13 be brought to the attention of the sentencing Judge. The
14 government is permitted to enter into such agreements with
15 witnesses such as Salvatore Vitale, Gasper Valenti, Peter
16 Zuccaro, Anthony Ruggiano, Junior, and to make such promises,
17 and the law allows the use of testimony from such witnesses.
18 In fact, the testimony of such a witness may be enough, by
19 itself, for a jury to convict a defendant, if the jury finds
20 that the testimony establishes a defendant's guilt beyond a
21 reasonable doubt.

22 You should bear in mind that a witness who has
23 entered into a cooperation agreement has an interest in this
24 case different from that of an ordinary witness. Because of
25 the nature of a cooperating witness' testimony and the

- Charge -

3778

1 possible interest of a cooperating witness may have in
2 testifying, the testimony of such a witness must be
3 scrutinized with greater care than the testimony of an
4 ordinary witness. It should be viewed with particular caution
5 when you decide how much, if any, of such testimony should be
6 believed and what weight it should be given. You should, for
7 example, ask yourselves whether the accomplice witness would
8 benefit more by lying or telling the truth. Was the testimony
9 of the accomplice made up in any way because he believed or
10 hoped that he would receive favorable treatment from the
11 government or a favorable outcome by testifying falsely? Or
12 did he believe that his interests would be best served by
13 testifying truthfully? If you believe that the witness was
14 motivated by hopes of personal gain, was the motivation one
15 that would cause him to lie, or was it would be that would
16 cause him to tell the truth? Did his motivation color the
17 witness' testimony? In sum, you should look at all the
18 evidence in deciding whether you believe the cooperating
19 witness and what weight, if any, to give his testimony.

20 I caution you, however, that you may not draw any
21 conclusions or inferences of any kind about the guilt of the
22 defendant from the fact that a witness for the government has
23 pleaded guilty to a criminal charge. A witness' decision to
24 plead guilty is a personal decision about his own guilt. It
25 may not be used by you as evidence of the defendant's guilt.

- Charge -

3779

1 You have heard testimony from witness John
2 Zaffarano, whose testimony was compelled by the Court after he
3 received a grant of immunity. You are instructed that the
4 government is entitled to call, as a witness, a person who has
5 been granted immunity. This testimony alone, if believed by
6 the jury beyond a reasonable doubt, may be of sufficient
7 weight to sustain a verdict of guilt even though it is not
8 corroborated by or supported by other evidence. You should
9 consider testimony given under a grant of immunity with
10 greater care and caution than the testimony of an ordinary
11 witness. You should consider whether testimony under a grant
12 of immunity has been affected by the witness' own interest in
13 the outcome of the case or by prejudice against the defendant.

14 On the other hand, you should also consider that an
15 immunized witness can be prosecuted for perjury for making a
16 false statement under oath. After considering these things,
17 you may give testimony given under a grant of immunity such
18 weight as you feel it deserves.

19 You have heard evidence during the trial that
20 witnesses have discussed the facts of the case and their
21 testimony with the lawyers before the witnesses appeared in
22 court. Although you may consider the fact when you are
23 evaluating a witness' credibility, I should tell you that
24 there is nothing either unusual or improper about a witness
25 meeting with lawyers before testifying so that the witness can

- Charge -

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1 be aware of the subjects he will be questioned about, focus on
2 those subjects, and have the opportunity to review relevant
3 exhibits before being questioned about them. Such
4 consultation helps conserve your time and the Court's time.
5 In fact, it would be unusual for a lawyer to call a witness
6 without such consultations.

7 The weight you give to the fact or the nature of the
8 witness' preparation for his or her testimony and what
9 inferences you draw from such preparation, are matters
10 completely within your discretion.

11 You have heard evidence about the involvement of
12 certain other people in the offenses referred to in the
13 indictment. You may not draw any inference, favorable or
14 unfavorable, towards the government or the defendant from the
15 fact that certain persons are not on trial before you. That
16 these individuals are not on trial before you is not your
17 concern. You also should not speculate as to the reason these
18 people are not on trial before you, nor should you allow their
19 absence as parties to influence in any way your deliberations
20 in this case. You should not draw any inference from the fact
21 that any other person is not present at this trial. Your
22 concern is solely the defendant on trial before you.

23 I will now turn to the second part of this charge,
24 and I instruct you as to the legal elements of the crimes
25 charged in the indictment. I am first going to discuss some

- Charge -

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1 general principles that apply to multiple charges. Then I
2 will go through the specific charges and instruct you
3 regarding the elements that the government must prove beyond a
4 reasonable doubt for each charge.

5 The defendant is formally charged in an indictment.
6 As I instructed you at the outset, an indictment is merely a
7 charge or accusation.

8 The in this case contains three counts and fourteen
9 racketeering acts. You must consider each count of the
10 indictment separately and you must return a separate verdict
11 for each count. I prepared a verdict sheet on which you must
12 record each of your determinations.

13 If the indictment charges that a specific act
14 occurred on a certain date or time, and the evidence indicates
15 that it may have occurred on another date or time, the law
16 only requires a substantial similarity between the dates and
17 times alleged in the indictment, and the dates and times
18 established by testimony or exhibits.

19 For all of the charges and racketeering acts, you
20 will be asked to decide whether the defendant acted
21 "knowingly" and "intentionally".

22 A person acts "knowingly", when he acts purposely
23 and voluntarily, and not because of ignorance, mistake,
24 accident, or carelessness. Whether a defendant acted
25 knowingly may be proven by his conduct and by all of the facts

- Charge -

3782

1 and circumstances surrounding the case.

2 A person acts "intentionally" when he acts
3 deliberately and purposefully. That is, a defendant's act
4 must have been the product of his conscious, objective
5 decision. The defendant need not be aware of the specific law
6 or rule that his conduct may have violated, but his acts must
7 not have been the product of a mistake or accident.

8 The indictment alleges that the defendant conspired
9 to commit particular crimes under federal and state laws.
10 First, I will instruct you on the federal law of conspiracy,
11 and then on conspiracy under New York State law. Later, I
12 will give you instructions on the federal and state laws that,
13 according to the government, the defendant conspired to
14 violate. In order to find the defendant guilty under the
15 state or federal conspiracy laws, you must find that the
16 government has proven each and every element-- each and every
17 one of the elements of conspiracy beyond a reasonable doubt.

18 A conspiracy is an agreement by two or more persons
19 to cooperate in accomplishing some unlawful objective. The
20 crime of conspiracy is separate from the crime the alleged
21 conspirators agreed to commit. A conspiracy is a crime in and
22 of itself, even if it fails to achieve its purpose.

23 In Counts 1 and 2 of the indictment and in six
24 racketeering acts, the government has charged the defendant
25 with conspiracies under federal law. Under federal law, the

- Charge -

3783

1 government must prove two elements beyond a reasonable doubt,
2 in order to prove the defendant guilty.

3 First: That two or more persons entered into the
4 particular unlawful agreement charged in the racketeering act
5 or count that you are considering; and

6 Second, that the defendant knowingly and
7 intentionally became a member of that conspiracy.

8 First, as to the existence of a charged conspiracy,
9 the government must prove, beyond a reasonable doubt, that two
10 or more persons agreed to cooperate in achieving the unlawful
11 objective charged in the count of racketeering act that you
12 are considering. The government does not have to prove that
13 there was an explicit or formal agreement. It also does not
14 have to prove that the conspirators stated in words or in
15 writing what the plan was, its object or purpose, or the means
16 by which it was to be accomplished. For this element, it is
17 sufficient if the proof establishes, beyond a reasonable
18 doubt, that at least two people tacitly came to a mutual
19 understanding to accomplish the unlawful act.

20 (Transcript continues on next page.)

21

22

23

24

25

Charge of the Jury

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1 (Continuing)

2 THE COURT: You may find that the existence of
3 conspiratorial agreement has been established by direct
4 evidence. You may also infer from indirect evidence, such as
5 the actions and statements of the people involved, that they
6 had come to an agreement to achieve an unlawful purpose and
7 therefore, brought a conspiracy into existence.

8 Second, as to whether the defendant joined the
9 conspiracy, the Government must prove beyond a reasonable
10 doubt that the defendant knowingly and intentionally became a
11 participant in, or a member of, the charged conspiracy.

12 Remember that, as I instructed you earlier, a person
13 acts knowingly and intentionally if he acts voluntarily,
14 deliberately, and not because of ignorance, mistake, accident
15 or carelessness. In determining whether a defendant
16 intentionally joined a conspiracy, you must find, based on all
17 of the evidence, that he participated in it with knowledge of
18 its unlawful purpose and with the specific intention of
19 furthering one or more of its objectives.

20 To become a member of a conspiracy, a defendant need
21 not have known the identities of each member, nor their
22 number, nor all of their activities. A defendant need not
23 have been fully informed of all of the details, or the scope
24 of a conspiracy. A defendant need not have joined in all of
25 the conspiracy's unlawful objectives. Proof that a defendant

Charge of the Jury

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1 had a financial interest in the outcome of the scheme is not
2 essential.

3 The extent or duration of his participation does not
4 matter, so long as he participated. Each member may perform
5 separate and distinct actions and may perform them at
6 different times. Some conspirators may play major roles,
7 while others may play minor ones. Even a single act may be
8 sufficient to show knowledge and intent to join the
9 conspiracy. A person who willfully joins an existing
10 conspiracy is charged with the same responsibility as if he
11 had been one of the two or more original founders of the
12 conspiracy.

13 I want to caution you, however, that a defendant's
14 mere presence at the scene of an alleged crime does not, by
15 itself, make him a member of the conspiracy, even if the
16 defendant knows that a crime is being committed or acquiesces
17 in the criminal conduct of others.

18 Mere association with one or more members of a
19 conspiracy does not automatically make the defendant a member.
20 A person may know or be friendly with a criminal, without
21 being a criminal himself.

22 Mere knowledge or acquiescence without participating
23 in the unlawful plan is not sufficient. The fact that the
24 acts of a defendant, without knowledge, merely happen to
25 further purposes or objectives of the conspiracy, does not

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1 make the defendant a member. The defendant, with an
2 understanding of the unlawful character of the conspiracy,
3 must have intentionally engaged, advised or assisted in it for
4 the purpose of furthering the illegal undertaking.

5 In conclusion, under the Federal law of conspiracy,
6 if you find that the Government has failed to prove, beyond a
7 reasonable doubt, that a particular conspiracy existed, or
8 that Mr. Asaro knowingly and intentionally became a member of
9 the charged conspiracy, then you must acquit him of the
10 criminal conspiracy you are considering.

11 The Government has also charged the defendant in
12 certain of the charged Racketeering Acts with a conspiracy
13 under New York State law.

14 In order to prove that the defendant committed the
15 crime of conspiracy under New York State law, the Government
16 must prove each of the following three elements beyond a
17 reasonable doubt:

18 First: That the defendant agreed with one or more
19 persons to engage in conduct that would constitute a crime;

20 Second: That the defendant did so with the intent
21 that such conduct be performed; and

22 Third: That at least one conspirator committed at
23 least one overt act in furtherance of the conspiracy.

24 The New York State law definition of conspiracy is
25 essentially the same as the Federal law definition, requiring

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1 both an agreement and a knowing, intentional decision to
2 participate, except that New York State law also requires one
3 extra element: An overt act.

4 An overt act is any step, action or conduct that is
5 taken to achieve or further the objective of the conspiracy.
6 An overt act itself need not be criminal, nor need it be the
7 crime that is the purpose of the conspiracy.

8 If the Government establishes the first two elements
9 of conspiracy under New York State law, then proof of any one
10 overt act is enough to prove the existence of the conspiracy.
11 It is not necessary that each member of the conspiracy
12 committed or participated in that overt act. Rather, in the
13 eyes of the law, the act of one member of a conspiracy becomes
14 the act of all members. Thus, proof of an overt act by only
15 one of the conspirators is sufficient. You must all agree
16 that the same overt act was committed.

17 The indictment alleges that the defendant aided and
18 abetted the commission of particular crime. I will instruct
19 you on the law of aiding and abetting under both Federal and
20 New York State law before addressing the specific crime
21 charged in the indictment.

22 The Federal aiding and abetting statute states as
23 follows:

24 Whoever commits an offense against the United States
25 or aids, abets, counsels, commands, induces or procures its

Charge of the Jury

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1 commission, is punishable as a principal.

2 Under the aiding and abetting statute, it is not
3 necessary for the Government to prove that a defendant himself
4 physically committed the act or crime in order to find the
5 defendant guilty. If you find that a defendant knowingly and
6 intentionally helped another person in the commission of a
7 crime, he is as guilty as if he personally committed it.

8 To convict the defendant on the ground that he aided
9 and abetted the commission of a crime charged, the Government
10 must first prove that another person committed that crime. No
11 one can be convicted of aiding and abetting the criminal act
12 of another if no crime was committed by the other person in
13 the first place.

14 If you do find that a crime was committed, then you
15 must determine whether the defendant aided and abetted the
16 commission of the crime by knowing of the crime and
17 participating in the crime by doing some act with the intent
18 to have the crime succeed.

19 In order for the defendant to be convicted under an
20 aiding and abetting theory, he must have had more than mere
21 knowledge that a crime was being committed and acquiescence in
22 the commission of the crime. Merely being present at the
23 scene of a crime is not enough, and being the best friend of
24 the person who actually committed the crime -- even coupled
25 with knowledge that a crime was committed -- is not enough.

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1 The defendant must participate, by knowingly and intentionally
2 seeking by some act to make the criminal venture succeed.

3 The relevant New York State statute regarding aiding
4 and abetting is as follows:

5 When one person engages in conduct which constitutes
6 an offense, another person is criminally liable for such
7 conduct when, acting with the mental culpability required for
8 the commission thereof, he solicits, requests, commands,
9 importunes, or intentionally aids such person to engage in
10 such conduct.

11 As with the Federal law, presence at a crime scene,
12 even when coupled with knowledge that a crime has taken place
13 and friendship with the criminal, is not sufficient to make
14 the defendant criminally liable for the crime.

15 In order for the defendant to be held criminally
16 liable for the criminal conduct of another under New York
17 State law, you must find beyond a reasonable doubt:

18 First: That he solicited, requested, commanded,
19 importuned, or intentionally aided that person or persons to
20 engage in that conduct; and

21 Second: That he did so with the state of mind
22 required for the commission of the crime.

23 This state of mind requirement is essentially the
24 same as knowing and intentional requirements in the Federal
25 law, but the specific New York crimes that the defendant is

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1 alleged to have aided and abetted might use different terms or
2 require different degrees of knowledge and intent. I will
3 explain those when I instruct you on those specific crimes.

4 Here too, if it is proven beyond a reasonable doubt
5 that the defendant is criminally liable for the conduct of
6 another, the extent or degree of the defendant's participation
7 in the crime does not matter -- he is just as guilty of that
8 offense as if he committed it himself.

9 Now that I have discussed some general principles of
10 law, I will instruct you in detail on the law regarding each
11 count of the indictment and each Racketeering Act. Because I
12 believe it will assist your understanding of the relevant law,
13 I am going discuss some of the counts and Racketeering Acts in
14 an order different from the way that they appear in the
15 indictment. Of course, you may deliberate about the counts
16 and Racketeering Acts in any order that you choose.

17 There are three counts in the indictment. The first
18 count alleges that the defendant joined a conspiracy to
19 violate a section of the racketeering and corrupt
20 organizations act, also known as the RICO Act. I will read
21 you the indictment and then explain the elements of proof.

22 Count 1 of the indictment alleges:

23 On or about and between January 1, 1968 and June 30,
24 2013, both dates being approximate and inclusive, within the
25 Eastern District of New York and elsewhere, the defendant

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1 Vincent Asaro, together with others, being a person employed
2 by and associated with the Bonanno crime family, an enterprise
3 engaged in, and the activities of which affected interstate
4 and foreign commerce, did knowingly and intentionally conspire
5 to conduct and participate, directly and indirectly, in the
6 conduct of the affairs of that enterprise through a pattern of
7 racketeering activity, in violation of Federal law.

8 You should not take the use of the word racketeering
9 in this statute and in my instructions as indicating anything
10 either in favor of the defendant or in favor of the
11 Government. Congress simply used the word to define this
12 crime.

13 I have already instructed you on conspiracy, so you
14 know that a conspiracy requires some underlying unlawful
15 objective. In this case, the indictment alleges that the
16 conspiracy's underlying objective was to conduct the affairs
17 of the Bonanno family enterprise through a pattern of
18 racketeering activity. I will explain those terms in more
19 detail in a moment. I will now read you the part of the
20 indictment that alleges that the enterprise in this case was
21 the Bonanno crime family. And I quote:

22 The members and associates of the Bonanno organized
23 crime family of La Cosa Nostra constituted an enterprise as
24 defined in Federal law that is a group of individuals
25 associated, in fact, hereinafter the Bonanno crime family and

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1 the enterprise. The enterprise constituted an ongoing
2 organization whose members functioned as a continuing unit for
3 a common purpose of achieving the objectives of the
4 enterprise. The Bonanno crime family engaged in, and its
5 activities affected interstate and foreign commerce. The
6 Bonanno crime family was an organized criminal group that
7 operated in the Eastern District of New York and elsewhere.

8 La Cosa Nostra operated through the organized crime
9 families. Five of these crime families -- the Bonanno,
10 Colombo, Gambino, Genovese and Lucchese crime families -- were
11 headquartered in New York City, and supervised criminal
12 activity in New York, in other areas of the United States and,
13 in some instances, in other countries. Another crime family,
14 the DeCavalcante crime family, operated principally in
15 New Jersey, but from time to time also in New York City.

16 The ruling body of La Cosa Nostra known as The
17 Commission consisted of leaders from each of the crime
18 families. The Commission convened from time to time to decide
19 certain issues affecting all of the crime families such as
20 rules governing crime family membership.

21 The Bonanno crime family had hierarchy and
22 structure. The head of the Bonanno crime family was known as
23 the boss. The Bonanno crime family boss was assisted by an
24 underboss and a counselor known as a consigliere. Together,
25 the boss, underboss and consigliere were the crime family's

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1 administration. With the assistance of the underboss and the
2 consigliere, the boss was responsible for, among other things,
3 setting policy and resolving disputes within and between
4 La Cosa Nostra crime families and other criminal groups. The
5 administration further supervised, supported, protected and
6 disciplined the lower-ranking participants in the crime
7 family. In return for their supervision and protection, the
8 administration received part of the illegal earnings generated
9 by the crime family. Members of the Bonanno crime family
10 served in an acting rather than official capacity in the
11 administration on occasion due to another administration
12 member's incarceration or ill health, or for the purpose of
13 seeking to insulate another administration member from law
14 enforcement scrutiny. Further, on occasion, the Bonanno crime
15 family was overseen by a panel of crime family members that
16 did not include the boss, underboss and/or consigliere.

17 Below the administration of the Bonanno crime family
18 were numerous crews, also known as regimes and decinas. Each
19 crew was headed by a captain, also known as a skipper,
20 caporegime and capodecina. Each captain's crew consisted of
21 soldiers and associates. The captain was responsible for
22 supervising the criminal activities of his crew and providing
23 the crew with support and protection. In return, the
24 captain often received a share of the crew's earnings.

25 Only members of the Bonanno crime family could serve

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1 as a boss, underboss, consigliere, captain or soldier.
2 Members of the crime family were referred to on occasion as
3 goodfellas or wiseguys or as persons who had been straightened
4 out or who had their button. Associates were individuals who
5 were not members of the crime family, but who nonetheless
6 engaged in criminal activity for, and under the protection of,
7 the crime family.

8 Many requirements existed before an associate could
9 become a member of the Bonanno crime family. The Commission
10 of La Cosa Nostra from time to time limited the number of new
11 members that could be added to a crime family. An associate
12 was also required to be proposed for membership by an existing
13 crime family member.

14 When the crime family's administration considered
15 the associate worthy of membership, the administration then
16 circulated the proposed associate's name on a list given to
17 other La Cosa Nostra crime families, which the other crime
18 families reviewed and either approved or disapproved. Unless
19 there was an objection to the associate's membership, the
20 crime family then inducted, or straightened out, the associate
21 as a member of the crime family in a secret ceremony.

22 During the ceremony the associate, among other
23 things, swore allegiance for life to the crime family above
24 all else, even the associate's own family; swore, on penalty
25 of death, never to reveal the crime family's existence,

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1 criminal activities or other secrets; and swore to follow all
2 orders issued by the crime family boss, including swearing to
3 commit murder if the boss directed it, close quote.

4 The Government has charged the purposes, methods and
5 means of the enterprise as follows:

6 Quote, the principal purpose of the Bonanno crime
7 family was to generate money for its members and associates.
8 This purpose was implemented by members and associates of the
9 Bonanno crime family through various criminal activities,
10 including robbery, extortion, illegal gambling and
11 loansharking. The members and associates of the Bonanno crime
12 family also furthered the enterprise's criminal activities by
13 threatening economic injury and using and threatening to use
14 physical violence, including murder.

15 Although the primary purpose of the Bonanno crime
16 family was to generate money for its members and associates,
17 the members and associates at times used the resources of the
18 family to settle personal grievances and vendettas, sometimes
19 with the approval of higher-ranking members of the family.
20 For those purposes, members and associates of the enterprise
21 were asked and expected to carry out, among other crimes, acts
22 of violence, including murder, extortion, robbery and assault.

23 The members and associates of the Bonanno crime
24 family engaged in conduct designed to prevent Government
25 detection of their identities, their illegal activities and

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1 the location of proceeds or evidence of those activities.
2 That conduct included a commitment to murdering persons,
3 particularly members or associates of organized crime
4 families, who were perceived as potential witnesses against
5 members and associates of the enterprise.

6 Members and associates of the Bonanno crime family
7 often coordinated criminal activity with members and
8 associates of other organized crime families, close quote.

9 Finally, the Government has charge the defendant's
10 role in the enterprise as follows:

11 Quote, at various times the defendant Vincent Asaro
12 was a member of the administration, a captain, a soldier and
13 an associate within the Bonanno crime family, close quote.

14 In order to explain Count 1, I will begin by
15 explaining the underlying crime, which I will refer to as RICO
16 or racketeering. Remember that the defendant is not charged
17 with actually committing this RICO crime, which has five
18 elements. He is charged with conspiring to commit this crime.
19 I am explaining the crime now only because, in order to
20 determine whether a conspiracy existed, as charged in Count 1,
21 and whether the defendant joined in it, you need to understand
22 the illegal objective of the conspiracy.

23 The underlying crime, racketeering, has five
24 elements:

25 First: An enterprise existed;

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1 Second: The enterprise affected interstate or
2 foreign commerce;

3 Third: A person was associated with or employed by
4 that enterprise;

5 Fourth: The person engaged in a pattern of
6 racketeering activity; and

7 Fifth: The person conducted or participated in the
8 conduct of the enterprise through a pattern of racketeering
9 activity.

10 Now I will instruct you in greater detail on each of
11 these elements.

12 The first element of the crime of racketeering is
13 that the enterprise existed as alleged in the indictment. An
14 enterprise is a group of people associated together for a
15 common purpose of engaging in a course of conduct. To qualify
16 as an enterprise, a group:

17 Must have a common purpose;

18 Must have an ongoing framework for making or
19 carrying out decisions; and

20 Must function as a continuing unit.

21 Although an enterprise must have a decision-making
22 framework, it's not necessary that the enterprise have any
23 particular or formal structure. It must have sufficient
24 organization so that its members functioned and operated in a
25 coordinated manner in order to carry out the alleged common

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1 purpose or purposes of the enterprise.

2 In order for an enterprise to function as a
3 continuing unit, it must continue in an essentially unchanged
4 form during substantially the entire period charged in the
5 indictment. This does not mean that the people involved must
6 remain the same. The personnel of the enterprise may change
7 and need not be associated with the enterprise for the entire
8 period alleged in the indictment. The core of the enterprise
9 has to be essentially the same throughout the period charged.

10 Finally, the enterprise must be the one charged in
11 the indictment, which I read to you earlier.

12 The second element of the crime of racketeering is
13 that the conduct of the enterprise affected interstate or
14 foreign commerce. Interstate commerce is any trading or
15 business or travel across State lines, and foreign commerce is
16 between the United States and any other country. To establish
17 the requisite effect of interstate or foreign commerce, the
18 Government is not required to prove a significant or a
19 substantial effect on interstate or foreign commerce. Any
20 effect that the enterprise has on legal or illegal interstate
21 or foreign commerce is sufficient. It does not matter whether
22 the effect is delayed or immediate; expected or unpredictable,
23 or negative or positive.

24 It is not necessary for the Government to prove that
25 the racketeering acts themselves affected interstate or

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1 foreign commerce; it is the enterprise and its activities
2 considered in their entirety that must be shown to have that
3 effect.

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5 (Continued on following page.)

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Charge of the Court

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1 (Continuing)

2 THE COURT: Effect on interstate or foreign commerce
3 may be proved through the effect caused by the individual
4 racketeering acts. It's not necessary that the person knew
5 that the enterprise would affect interstate or foreign
6 commerce, that the person intended to affect interstate or
7 foreign commerce, or that the person engaged in or his
8 activities affected, interstate or foreign commerce.

9 The government need only prove that the activities
10 of the enterprise considered in their entirety had some
11 minimal effect on interstate and foreign commerce.

12 The third element of racketeering is that a person
13 was associated with the enterprise at the time he committed
14 the racketeering acts charged in the indictment. To associate
15 means to join, often in a loose relationship as a partner,
16 fellow worker, colleague, friend, companion or ally. A person
17 is associated with an enterprise when, for example, he joins
18 with other members of the enterprise and he knowingly aides or
19 furthers the activities of the enterprise, or he conducts
20 business or other activities with or through the enterprise.

21 It is not required that the person have been
22 associated with the enterprise for the entire time the
23 enterprise existed. The person need not have had a formal
24 position in the enterprise, or participated in all the
25 activities of the enterprise, or known about the participation

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1 of all the other members of the enterprise. It is sufficient
2 that at some point during the existence of the enterprise as
3 alleged in the indictment, the person was associated with the
4 enterprise within the meaning of those terms as I have just
5 explained them, that he knew of the general nature of the
6 enterprise, and that the enterprise extended beyond his own
7 role in the enterprise.

8 The person must have knowingly associated with the
9 enterprise. He must have had knowledge of the existence of
10 the enterprise through a general awareness of its existence
11 and some of its activities and personnel.

12 The fourth element of racketeering is that the
13 person engaged in a pattern of racketeering activity. The
14 RICO law has a list of crimes that count as racketeering acts.
15 So, engaging in a pattern of racketeering activity has three
16 requirements.

17 First, the person intentionally committed, or
18 caused, or aided and abetted two or more of the racketeering
19 acts alleged in the indictment. At least two racketeering
20 acts must have been committed within ten years of each other.
21 For purposes of calculating whether the two racketeering acts
22 racketeering acts were committed within ten years, please do
23 not count the time period from December 11, 1998 through
24 May 21, 2003, during which time the defendant was
25 incarcerated. By statute, any term of imprisonment is not

Charge of the Court

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1 counted toward this calculation.

2 Second, the racketeering acts are related.
3 Relatedness may be established in many ways, including by
4 proof that the racketeering acts had the same or similar
5 purposes, results, participants, victims, or methods of
6 commission, or otherwise are related by distinguishing
7 characteristics that are not isolated events or acts.

8 Third, the racketeering acts themselves extend over
9 a substantial period of time or they posed a threat of
10 continued criminal activity.

11 A threat of continued criminal activity may be
12 established when the evidence shows that the racketeering acts
13 are part of a long-term association that exists for criminal
14 purposes or when the racketeering acts are shown to be the
15 regular way of conducting the affairs of the enterprise.

16 In determining whether the government has proven the
17 threat of continued unlawful activity, you are not limited to
18 consideration of the specific racketeering acts charged
19 against the defendant. Rather, in addition to considering
20 such acts you may also consider the nature of the enterprise,
21 and other unlawful activities of the enterprise and its
22 members viewed in their entirety, including both charged and
23 uncharged unlawful activities.

24 A series of disconnected acts does not constitute a
25 pattern, and a series of disconnected crimes does not

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1 constitute a pattern of racketeering activity, nor does it
2 amount to or pose a threat of continued racketeering activity.

3 The fifth and final element of racketeering is that
4 the person knowingly participated, either directly or
5 indirectly, in the conduct of the affairs of the enterprise
6 through a pattern of racketeering activity. This means that
7 there must have been a meaningful connection between the
8 person's racketeering acts and the affairs of the enterprise.
9 Such a meaningful connection exists if the racketeering acts
10 are related in some meaningful way with the affairs of the
11 enterprise, or if they benefit the enterprise, or if their
12 commission was facilitated by the enterprise or the person's
13 status within it.

14 Also, in order to have conducted or participated in
15 the affairs of the enterprise, the person must have played
16 some part in the operation or management of the enterprise.
17 The person need not have exercised significant control over or
18 within the enterprise, held a formal position in the
19 enterprise, shared in the profits of the enterprise, or have
20 had primary responsibility for the enterprise's affairs. For
21 the purposes of this element, an enterprise's lowest-ranking
22 member conducts the affairs of the enterprise just as much as
23 its top chief.

24 Now that I explained the underlying crime of
25 racketeering, I will instruct you on the law as it pertains to

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1 Count One of the indictment; that is, the racketeering
2 conspiracy. I remind you that to prove a conspiracy, the
3 government must prove that the defendant knowingly and
4 intentionally agreed to commit a crime, here, the crime of
5 racketeering, but it does not matter whether the crime was
6 eventually committed. In order to convict the defendant of
7 the RICO conspiracy offense charged in Count One, you must
8 find that the government has proved beyond a reasonable doubt
9 each of the four following elements:

10 First, that the enterprise affecting interstate or
11 foreign commerce existed, as alleged in the indictment, or
12 that such an enterprise would be established.

13 Second, that the defendant knowingly agreed to be
14 associated with the enterprise.

15 Third, that the defendant knowingly agreed with at
16 least one co-conspirator, that at least two racketeering acts
17 would be committed by one or more members of the conspiracy.

18 And fourth, that the defendant knowingly agreed to
19 conduct or participate directly or indirectly in the conduct
20 of the affairs of the enterprise through a pattern of
21 racketeering activity.

22 The meanings of the terms enterprise, affecting
23 interstate or foreign commerce, associated with the enterprise
24 and pattern of racketeering activity are as I instructed you a
25 moment ago in my explanation of the substantive crime of

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1 racketeering, and you must apply those same definitions here.

2 The essential aspect of a racketeering conspiracy is
3 an agreement to commit the crime of racketeering. Now I will
4 go into detail on each of the four elements.

5 The first element is that the enterprise charged in
6 the indictment existed, or would have existed had the
7 conspiracy achieved its goal. Because this Count charges a
8 conspiracy, the government is not required to prove that the
9 enterprise was actually established. Rather, the government
10 must prove that if the conspiracy were completed as
11 contemplated by the conspirators, the enterprise would be
12 established, and the enterprise would affect interstate or
13 foreign commerce. Of course, if you find that the enterprise
14 charged in the indictment actually existed and that it
15 actually affected interstate commerce, this element is
16 satisfied.

17 For the second element, that the defendant agreed
18 that he would be associated with the enterprise; again, the
19 government does not need to prove the defendant was actually
20 associated with the enterprise. Rather, the government must
21 prove that if the charged conspiracy were completed as
22 contemplated, the defendant would become associated with the
23 enterprise. Obviously, if you find that the defendant was
24 actually associated with the enterprise, this element is
25 satisfied.

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1 The third element is that the defendant knowingly
2 agreed with at least one other co-conspirator that at least
3 two racketeering acts would be committed by one or more
4 members of the conspiracy. For this element, the government
5 is not required to prove that any racketeering acts were
6 actually committed. It is also not required to prove that the
7 defendant personally committed two racketeering acts, or that
8 he agreed to personally commit two racketeering acts. Rather,
9 the government must prove that the defendant agreed with a
10 co-conspirator that one or more members of the racketeering
11 conspiracy (which could be the defendant himself) would commit
12 at least two racketeering acts. The two acts need not be
13 agreed to at the same time; they may have been agreed to at
14 any time during the course of the conspiracy. Of course, if
15 you find that the defendant did agree to commit two
16 racketeering acts himself, then this element is satisfied.

17 Finally, to establish the fourth element, the
18 government must prove that the defendant agreed to participate
19 in the enterprise knowing and intending that the affairs of
20 the enterprise would be conducted through a pattern of
21 racketeering activity.

22 This means that the government must prove that if
23 the racketeering acts to which the defendant agreed were
24 actually committed, they would form a pattern of racketeering
25 activity. As I previously instructed you, to prove a pattern

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1 of racketeering activity, the government must prove that the
2 racketeering acts would be related in some way to each other,
3 and would extend over a substantial period of time or pose a
4 threat of continued illegal activity. You must apply those
5 instructions here. Of course, if you find that the two
6 racketeering acts were actually committed within ten years of
7 each other, were in fact related to one another by similar
8 methods, objectives, participants, or other relatedness
9 factors, and did, in fact, extend over a substantial period of
10 time or threaten to continue over time, you may find that the
11 government has met this burden.

12 The government must also prove that the defendant
13 knew and intended that there would be a meaningful connection
14 between the pattern of racketeering activity and the affairs
15 of the enterprise. Such a meaningful connection exists if the
16 government proves that the racketeering acts would be related
17 in some meaningful way to the affairs of the enterprise, or
18 that the acts would benefit the enterprise, or that the
19 commission of the acts would be facilitated by the enterprise.
20 Of course, the government meets this burden if you find that
21 there existed a pattern of racketeering activity that in fact
22 had a meaningful connection to the Bonanno enterprise, as I
23 have defined those terms for you.

24 Finally, the government must also prove that the
25 defendant agreed to participate in the conduct of the affairs

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1 of the enterprise through the pattern of racketeering
2 activity. As I instructed you, to agree to participate means
3 that the defendant agreed to play some part in the operation
4 or management of the enterprise. You must apply that
5 instruction here. So, the government must prove that the
6 defendant agreed to play some part in the enterprise, knowing
7 and intending that its affairs would be conducted through a
8 pattern of racketeering activity, as that term has been
9 explained to you.

10 The elements of racketeering conspiracy, such as the
11 conspiratorial agreement, the defendant's knowledge of it, and
12 the defendant's participation in the conspiracy, may be
13 inferred from the various kinds of evidence before you. For
14 example, if the evidence establishes that the defendant and at
15 least one other co-conspirator committed racketeering acts in
16 furtherance of the charged enterprise's affairs, you may infer
17 the existence of the requisite agreement to commit a
18 racketeering conspiracy. Determine whether, based on the
19 entirety of the evidence, the government has proven that the
20 defendant entered into the requisite conspiratorial agreement.
21 When people enter into a conspiracy, they become agents of
22 each other, so that the act or statement of one conspirator
23 during the existence of, and in furtherance of, the conspiracy
24 is considered the act or statement of all the other
25 co-conspirators and is evidence against them all.

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1 Mere association with a guilty person does not prove
2 guilt. However, proof of continued association with persons
3 the defendant believes are members of the conspiracy may, but
4 need not, be evaluated by you as proof of the continuation or
5 non-continuation of the charged conspiracy and the defendant's
6 continued membership in that charged conspiracy.

7 Do you need a little break, do you want to stand up
8 and stretch?

9 Anyone want to stand up and stretch?

10 I think I do.

11 (Pause in the proceedings.)

12 THE COURT: Please be seated.

13 Racketeering Act One alleges that four separate
14 federal crimes and two separate state crimes were committed on
15 or about and between January 1, 1968 and December 31, 1990.
16 If you unanimously find, beyond a reasonable doubt, that the
17 defendant agreed that he or another co-conspirator would
18 commit any of these crimes, you may find that the government
19 has proven Racketeering Act One. But if you do not
20 unanimously find, beyond a reasonable doubt, that the
21 defendant made such an agreement, then you cannot find that
22 the government has proven Racketeering Act One.

23 For ease of analysis, I will instruct you first on
24 the substantive crimes, before instructing you on the
25 corresponding conspiracy crimes.

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1 Racketeering Act One (B) charges the defendant with
2 extortionate extension of credit. The indictment reads as
3 follows:

4 Between approximately January 1, 1968 and
5 December 31, 1990, in this district and elsewhere the
6 defendant, Vincent Asaro, together with others, did knowingly
7 and intentionally make one or more extortionate extensions of
8 credit, in violation of federal law.

9 The pertinent federal law states that:

10 Whoever makes any extortionate extensions of credit,
11 or conspires to do so, is guilty of a crime.

12 To prove a violation of this statute, two elements
13 must be established beyond a reasonable doubt.

14 First, that the defendant knowingly made an
15 extension of credit.

16 And second, that there was an understanding between
17 the defendant and the borrower, express or implied, tacit or
18 otherwise, that if the borrower delayed in making his
19 repayments or if there was a total failure to repay, violence
20 or other criminal means would be used to force repayment.

21 I will explain each of these elements in greater
22 detail.

23 The first element is the that the defendant
24 knowingly made an extension of credit. To extend credit means
25 to make or renew any loan, or to enter into any agreement,

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1 tacit or express, whereby the repayment of a debt may, or will
2 be deferred. It makes no difference whether the debt in
3 question is valid or acknowledged, or how it may have arisen.

4 As I instructed you, to act knowingly is to act
5 voluntarily and purposely, not because of ignorance, mistake,
6 accident, carelessness or other innocent reason.

7 The second element is at the time of the extension
8 of credit the defendant and the borrower understood that delay
9 or failure to repay could result in the use of violence or
10 other criminal means to cause harm to the person, or to the
11 reputation or property of some person.

12 In this context, the word understanding means merely
13 comprehension or awareness. It must be emphasized that it is
14 the awareness of the parties at the time of the loan which is
15 crucial. The actual fear of the borrower is not relevant to
16 this determination, nor does the statute require proof of
17 express threats. What is required is that the threat of
18 violence exists and that it be comprehended by the borrower
19 and the defendant. If so, the second element is satisfied.

20 I will now turn to Racketeering Act One (A) which
21 alleges that the defendant conspired to make one or more
22 extortionate extensions of credit. That reads:

23 Between approximately January 1st, of 1968 and
24 December 31st of 1990, the defendant, together with others,
25 did knowingly and intentionally conspire to make one or more

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1 extortionate extensions of credit in violation of federal law.

2 As I explained when I instructed you on the law of
3 federal conspiracy, in order to find that this racketeering
4 act has been proven, you must find that two or more persons
5 agreed to make one or more extortionate extensions of credit,
6 as that crime has been explained to you. You must then
7 determine whether the defendant knowingly and intentionally
8 became a member of that conspiracy. In assessing whether this
9 conspiracy has been proven, you must apply my earlier
10 instructions on the federal law of conspiracy.

11 Racketeering Act One (D) reads as follows:

12 Between approximately January 1, 1968 and
13 December 31, 1990, defendant Vincent Asaro, together with
14 others, did knowingly and intentionally participate in the use
15 of extortionate means to collect and attempt to collect one or
16 more extensions of credit, in violation of federal law.

17 That law provides, in pertinent part that: Whoever
18 knowingly participates in any way or conspires to do so in the
19 use of any extortionate means to collect or attempt to collect
20 any extension of credit violates federal law.

21 To prove a violation of this statute, the government
22 must establish each of the following three elements beyond a
23 reasonable doubt:

24 First, that the defendant collected attempted to
25 collect an extension of credit.

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1 Second, the defendant used extortionate means to
2 collect or attempt to collect the extension of credit.

3 And third, that the defendant participated knowingly
4 in the use of extortionate means.

5 And I will now explain each of these elements in
6 greater detail.

7 The first element of the offense is that the
8 defendant collected or attempted to collect an extension of
9 credit.

10 To collect means simply to induce a person in any
11 way to make a payment of money. It makes no difference
12 whether the debt or claim in question is valid or
13 acknowledged, or how it may have arisen.

14 The second element of the offense is that
15 extortionate means were used to collect or attempt to collect
16 the extension of credit. Extortionate means are any means
17 which involve the use, or an express or implicit threat of
18 use, of violence or other criminal means to cause harm to the
19 person, reputation, or property of any person. The second
20 element is directed at the conduct of the collector, not at
21 the state of mind of the borrower. The collector's actions
22 need not generate actual fear, but must have been intended to
23 induce fear in an ordinary person.

24 The third element of the offense is knowing
25 participation in the use of extortionate means. To act

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1 knowingly, again, means to act voluntarily and purposely, not
2 because of ignorance, mistake, accident or carelessness or
3 other innocent reason.

4 I will now turn to Racketeering Act One (C), which
5 alleges that the defendant conspired to participate in the use
6 of extortionate means to collect or attempt to collect one or
7 more extensions of credit.

8 Racketeering Act One (C) reads:

9 On or about and between January 1, 1968 and
10 December 31, 1990 the defendant, Vincent Asaro, together with
11 others, knowingly and intentionally conspired to participate
12 in the use of extortionate means to collect and attempt to
13 collect one or more extensions of credit, in violation of
14 federal law.

15 As I explained when I instructed you on the law of
16 federal conspiracy, in order to find this racketeering act
17 proven, you must find that two or more persons agreed to use
18 extortionate means to collect one or more extensions of
19 credit, as that crime was explained to you in connection with
20 Racketeering Act One (D). You must then determine whether the
21 defendant knowingly and intentionally became a member of that
22 conspiracy. In assessing whether this conspiracy has been
23 proven, you must apply my earlier instructions on the law of
24 federal conspiracy.

25 Racketeering Act One (F) reads as follows:

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1 Between approximately January 1, 1968 and
2 December 31, 1990, the defendant, together with others, did
3 knowingly and intentionally steal property by extortion, in
4 that the defendant and others obtained property, by compelling
5 and inducing one or more persons to deliver such property by
6 instilling in them a fear that if the property were not so
7 delivered, one or more persons would cause physical injury to
8 one or more persons in the future and cause damage to
9 property, in violation of New York state law.

10 Under New York State law a person is guilty of this
11 crime when he steals property and when that property,
12 regardless of its nature and value, is obtained by extortion
13 committed by instilling in the victim a fear that the actor or
14 another will cause physical injury to some person in the
15 future or cause damage to property.

16 A person steals property when, with intent to
17 deprive another of property or to appropriate the same to
18 himself or to a third person, he wrongfully takes, obtains, or
19 withholds the property from an owner of the property.

20 Property means any money, personal property, or thing of
21 value. Owner means a person having a right to possession of
22 the property superior to that of the person who takes it.

23 Intent means conscious objective or purpose. A person acts
24 with intent to deprive another of property or to appropriate
25 property to himself or to a third person when his conscious

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1 objective is to withhold the property or cause it to be
2 withheld permanently, or to exercise control over the
3 property, or to aid a third person in exercising control over
4 it, permanently, or to dispose of the property either for the
5 benefit of himself or a third person, or under such
6 circumstances as to render it unlikely that an owner will
7 recover the property.

8 A person wrongfully takes, obtains, or withholds
9 property from an owner when he obtains such property,
10 regardless of its nature or value, by extortion.

11 A person obtains property by extortion when he
12 compels or induces another person to deliver the property to
13 himself or to a third person by instilling in that person a
14 fear that, if the property is not so delivered, he or another
15 will cause physical injury to some person or cause damage to
16 property.

17 This racketeering act is also charged under aiding
18 and abetting theory. Thus, you may find Racketeering Act One
19 (F) proven if you find that the defendant aided and abetted
20 another person in committing the state law extortion. I
21 previously instructed you on aiding and abetting under New
22 York State law, and you must apply that instruction here.

23 I will now turn to Racketeering Act One (E) which
24 alleges that the defendant conspired to commit the New York
25 State crime of extortion, on which I just instructed you.

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1 Racketeering Act One (E) reads:

2 On or between January 1, 1968 and December 31, 1990,
3 the defendant, Vincent Asaro, together with others, did
4 knowingly and intentionally conspire to steal property by
5 extortion, in that the defendant and others agreed to obtain
6 property, to wit: United States currency, by compelling and
7 inducing one or more persons to deliver such property by
8 instilling in them a fear that, if the property were not so
9 delivered, one or more persons would cause physical injury to
10 one or more persons in the future and cause damage to
11 property, in violation of New York State law.

12 This racketeering act alleges that the defendant
13 conspired to commit the extortion charged in Racketeering Act
14 One (F). I have already instructed you on the law of
15 conspiracy and extortion under New York State law and you must
16 apply those instructions here. I remind you that for you to
17 find that the defendant committed the New York State crime of
18 conspiracy, the government must prove beyond a reasonable
19 doubt each of the following three elements:

20 First, that the defendant agreed with one or more
21 persons to commit extortion.

22 Second, that the defendant did so with the intent to
23 commit extortion.

24 And third, that the defendant, or one of the persons
25 with whom he agreed, committed at least one overt act in

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1 furtherance of the conspiracy.

2 I remind you that you must also apply here the
3 instructions that I gave you as to the definition of overt act
4 under New York State law.

5 (Continued on the following page.)

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1 THE COURT: I will now instruct you on Racketeering
2 Act Two.

3 Racketeering Act Two alleges three separate crimes
4 under New York State law: Conspiracy to murder Paul Katz;
5 murder of Paul Katz; and accessory after the fact to the
6 murder of Paul Katz.

7 Again, if you unanimously find, beyond a reasonable
8 doubt, that the defendant agreed that he or a co-conspirator
9 would commit any one of these three crimes, then you may find
10 that the government has proven Racketeering Act Two, but if
11 you do not unanimously find that the defendant made such an
12 agreement, then you cannot find that the government has proven
13 Racketeering Act Two. For ease of analysis, I will instruct
14 you on the crime of murder first.

15 Racketeering Act Two (B) reads that between
16 approximately December 1 and December 7, 1969, the defendant
17 Vincent Asaro, together with others, with intent to cause the
18 death of Paul Katz, did knowingly and intentionally cause his
19 death, in violation of New York State law.

20 Under New York State law, a person is guilty of
21 murder when, with intent to cause the death of another person,
22 he causes the death of such person. In order to prove the
23 defendant's guilt of the murder charged in Racketeering Act
24 Two (B), the government must prove beyond a reasonable doubt
25 each of the following two elements.

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1 First, that defendant intended to cause the death of
2 Paul Katz and, second, that acting in accordance with that
3 intent, the defendant caused the death of Paul Katz.

4 I have already charged you on the meaning of
5 "intent" and "intentionally." You must apply those
6 instructions here. Remember, premeditation is not a
7 prerequisite in determining intent. Intent may be formed in
8 seconds, actually in a brief instant before the commission of
9 an act. However, it is necessary for the intent to be formed
10 prior to or during the commission of the act or acts resulting
11 in the commission of a crime.

12 Racketeering Act Two (B) is also charged under an
13 aiding and abetting theory. Thus, you may find Racketeering
14 Act Two (B) proven if you find that the defendant aided and
15 abetted another person in committing the murder of Paul Katz.
16 I previously instructed you on the law of aiding and abetting
17 under New York State law and you must apply that instruction
18 here.

19 I will now turn to Racketeering Act Two (A) which
20 charges the defendant with conspiring to murder Paul Katz.

21 Racketeering Act Two (A) reads between approximately
22 December 1st and December 7, 1969, both dates being
23 approximate and inclusive, defendant Vincent Asaro, together
24 with others, did knowingly and intentionally conspire to cause
25 the death of another person, to wit, Paul Katz, in violation

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1 of New York State law.

2 This racketeering act alleges that the defendant
3 conspired to commit the murder charged in Racketeering Act
4 Two (B). I have already instructed you on the law of
5 conspiracy and murder under New York State law, and you must
6 apply those instructions here. I remind you that for you to
7 find that the defendant committed the New York State crime of
8 conspiracy, the government must prove beyond a reasonable
9 doubt each of the following three elements: First, that the
10 defendant agreed with one or more persons to commit the
11 murder; second, that the defendant did so with the intent to
12 commit the murder; and, third, that the defendant, or one or
13 more persons with whom he agreed, committed at least one overt
14 act in furtherance of the conspiracy.

15 I remind you that you must apply here the
16 instructions that I gave you as to the definition of overt act
17 under New York State law.

18 I will now turn to Racketeering Act Two (C) that
19 reads between approximately January of 1984 and December of
20 1986, the defendant, together with others, knowing that a
21 murder, contrary to New York State law had been committed, did
22 knowingly and intentionally assist the offender or offenders
23 in order to hinder and prevent the offender's prosecution in
24 violation of New York State law.

25 Under New York State state law, a person is guilty

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1 of the crime of accessory after the fact to murder when he
2 renders criminal assistance to a person who committed the
3 murder.

4 To find this racketeering act proven, the government
5 must prove, beyond a reasonable doubt, each of the following
6 two elements: First, that the defendant concealed, altered or
7 destroyed any physical evidence which might have aided in the
8 arrest or prosecution of a person he knew or believed had
9 committed a crime or was being sought for the commission of a
10 crime; and, second, when he committed those acts, he did so
11 with the intent to hinder that person's arrest or prosecution,
12 or to assist that person in benefiting from the crime.

13 I will now turn to Racketeering Act Three.
14 Racketeering Act Three alleges three separate crimes relating
15 to the robbery of the employees of Lufthansa Airlines:
16 Robbery and robbery conspiracy under federal law, and robbery
17 under New York State law. If you unanimously find, beyond a
18 reasonable doubt, that the defendant agreed that he or another
19 co-conspirator would commit any one of these crimes, you may
20 find that the government has proven Racketeering Act Three.
21 But if you do not unanimously find that the defendant
22 knowingly and intentionally made such an agreement, then you
23 cannot find that the government has proven Racketeering Act
24 Three.

25 For ease of analysis, I will instruct you on federal

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1 robbery first, before instructing you on federal conspiracy to
2 commit robbery.

3 Racketeering Act Three (B) reads that on or about
4 December 11th of 1978, the defendant, together with others,
5 did knowingly and intentionally obstruct, delay and affect
6 commerce and the movement of articles and commodities in
7 commerce, by robbery, that is the robbery of United States
8 currency and jewelry from one or more employees of Lufthansa
9 Airlines in violation of federal law.

10 The pertinent federal law states that whoever in any
11 way or degree obstructs, delays or affects commerce or the
12 movement of an article or commodity in commerce, by robbery,
13 or attempts or conspires to do so, or commits or threatens
14 physical violence to any person or property in furtherance of
15 a plan or purpose to do anything in violation of this section
16 violates federal law.

17 In order to prove the defendant committed robbery in
18 violation of federal law, the government must establish beyond
19 a reasonable doubt each of the following three elements:

20 First, that the defendant knowingly took personal property of
21 another, or from the presence of another; second, that the
22 defendant took this property against the victim's will, by
23 actual or threatened force, violence or fear of injury, either
24 immediately or in the future; and, third, that as a result of
25 defendant's actions, interstate commerce or an item moving in

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1 interstate commerce was delayed, obstructed or affected in any
2 way or degree.

3 The first element of the crime of robbery involves
4 the obtaining or taking of the property of another. In this
5 context, property includes money or other tangible and
6 intangible things of value. The second element of the crime
7 of robbery is that the defendant took property wrongfully by
8 using actual or threatened force, violence, or fear of injury
9 or economic harm, whether immediately or in the future.

10 In considering whether property was taken with the
11 use of force, violence or fear, you should give those words
12 their common and ordinary meaning and understand them as you
13 normally would. The use or threat of violence does not have
14 to be directed at the person whose property was taken. The
15 use or threat of force or violence might be aimed at a third
16 person. You must determine whether the defendant used or
17 threatened force, violence or fear, to unlawfully obtain the
18 property specified in the indictment.

19 As to the third element, I have already instructed
20 you on the meaning of interstate commerce and you must apply
21 those instructions here. As I instructed, any effect at all
22 on interstate commerce is enough to satisfy this element. For
23 example, that a successful robbery of money would prevent the
24 use of those funds to purchase articles that travel through
25 interstate commerce would be a sufficient effect on interstate

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1 commerce.

2 Racketeering Act Three (B) is also charged under an
3 aiding and abetting theory. Thus, you may find Racketeering
4 Act Three (B) proven if you find that the defendant aided and
5 abetted another person in committing robbery in violation of
6 federal law. I previously instructed you on the federal law
7 of aiding and abetting and you must apply that instruction
8 here.

9 I will now turn to Racketeering Act Three (A) which
10 alleges that the defendant conspired to commit federal
11 robbery.

12 The charge reads as follows. Between approximately
13 November 1st of 1978 and September 1st of 1979, the defendant,
14 together with others, did knowingly and intentionally conspire
15 to obstruct, delay and affect commerce and the movement of
16 articles and commodities in commerce by robbery, specifically
17 the robbery of United States currency and jewelry from one or
18 more employees of Lufthansa Airlines, in violation of federal
19 law.

20 As I explained when I instructed you on the law of
21 federal conspiracy, in order to find this Racketeering Act
22 proven, you must find that two or more persons agreed to
23 commit the robbery of the employees of Lufthansa Airlines, as
24 that crime has been explained to you in connection with
25 Racketeering Act Three (B). You must then determine whether

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1 the defendant knowingly and intentionally became a member of
2 that conspiracy. In assessing whether this conspiracy has
3 been proven, you must apply my earlier instructions on the law
4 of federal conspiracy.

5 Racketeering Act Three (C) reads as follows. On
6 approximately December 11, 1978, the defendant and others
7 knowingly and intentionally stole property by robbery, in that
8 the defendant and others forcibly stole property, that is,
9 United States currency and jewelry from one or more employees
10 of Lufthansa Airlines in violation of New York State law.

11 Under New York State law, a person is guilty of
12 robbery if he forcibly steals property. Again, property is
13 defined as including money or any other thing of value. A
14 person steals property when, with the intent to deprive
15 another of property or to appropriate the property to himself
16 or to a third person, the defendant wrongfully takes property
17 from its owner. A defendant forcibly steals property when he
18 uses or threatens the immediate use of physical force upon
19 another person for the purpose of compelling the owner of such
20 property or another person to deliver up the property.

21 Racketeering Act Three (C) is also charged under an
22 aiding and abetting theory. Thus, you may find Racketeering
23 Act Three (C) proven if you find that the defendant aided and
24 abetted another person in committing the robbery of the
25 employees of Lufthansa Airlines in violation of the New York

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1 State law. I previously instructed you on aiding and abetting
2 under New York State law. You must apply that instruction
3 here.

4 I will now -- would you like a break?

5 MS. MACEDONIO: I would.

6 THE COURT: Okay.

7 (Jury exits.)

8 (Recess taken.)

9 THE COURT: Okay. Are you ready?

10 MS. MACEDONIO: Yes. Thank you, Your Honor.

11 MS. ARGENTIERI: Yes.

12 MS. MACEDONIO: Judge, do you intend to send them
13 home after you finish the charge?

14 THE COURT: It depends on when I finish. I have
15 about 20 pages to go.

16 MS. MACEDONIO: Okay.

17 THE COURT: I have gone through about two-thirds of
18 it. So I guess we will finish at about 5:00. I might send
19 them in for a half hour.

20 MS. MACEDONIO: Okay.

21 MS. ARGENTIERI: And then are you dismissing all of
22 the alternates?

23 THE COURT: Yes.

24 MS. ARGENTIERI: Okay.

25 THE COURT: Well, I have on occasion a long time ago

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1 not done it. I'm not sure it's worth it. It's too
2 complicated.

3 MS. ARGENTIERI: It is.

4 THE COURT: Okay. After today or when they go out,
5 we will talk about what I am going to say about Wednesday,
6 when you want me to say it.

7 MS. MACEDONIO: Okay.

8 THE COURT: It's a holiday.

9 (Jury enters.)

10 THE COURT: Please be seated.

11 I will now instruct you on Racketeering Act Four.
12 Racketeering Act Four alleges two separate crimes under New
13 York State law: Arson and conspiracy to commit arson. If you
14 unanimously find, beyond a reasonable doubt, that the
15 defendant agreed that he or a co-conspirator would commit
16 either of these crimes, then you may find that the government
17 has proven Racketeering Act Four, but if you do not
18 unanimously find that the defendant made such an agreement,
19 then you cannot find that the government has proven
20 Racketeering Act Four.

21 I will instruct you on arson first before
22 instructing you on arson conspiracy.

23 Act Four (B) charges that between approximately
24 January of 1980 and January of 1981, the defendant, together
25 with others, did knowingly and intentionally damage a

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1 building, specifically 8601 Rockaway Boulevard in Ozone Park,
2 New York, by starting a fire in violation of New York State
3 law.

4 New York State law makes it illegal to intentionally
5 damage a building by starting a fire. Even the slightest
6 damage to the building is sufficient to prove this act.
7 Racketeering Act Four (B) is also charged under an aiding and
8 abetting theory. Thus, you may find Racketeering Act Four (B)
9 proven if you find that the defendant identified and abetted
10 another person in committing the charged arson of the Afters
11 lounge. I previously instructed you on aiding and abetting
12 under New York State law and you must apply that instruction
13 here.

14 Turning to Racketeering Act Four (A), that act
15 charges that between approximately January of 1980 and January
16 of 1981, the defendant and others knowingly and intentionally
17 conspired to damage a building, specifically 8601 Rockaway
18 Boulevard in Ozone Park, New York, by starting a fire in
19 violation of New York State law.

20 This Racketeering Act alleges that the defendant
21 conspired to commit the arson charged in Racketeering Act
22 Four (B). I have already instructed you on the law of
23 conspiracy and arson under New York State law and you must
24 apply those instructions here. I remind you that for you to
25 find that the defendant committed the New York State crime of

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1 conspiracy, the government must prove agreement, intent and an
2 overt act.

3 I will now instruct you on Racketeering Act Five.
4 Racketeering Act Five alleges that the defendant solicited the
5 murder of Gasper Ferreri, Junior, identified in the indictment
6 as John Doe Number One, in violation of New York State law.
7 If you find beyond a reasonable doubt that the defendant
8 agreed that he or a co-conspirator would solicit Gasper
9 Ferreri, Junior's murder, then you may find that the
10 government has proven Racketeering Act Five, but if you do not
11 find that the defendant made such an agreement, then you
12 cannot find that the government has proven Racketeering Act
13 Five.

14 That act charges that between approximately
15 January 1, 1983 and December 31, 1985, the defendant Vincent
16 Asaro did knowingly and intentionally solicit, request,
17 importune and otherwise attempt to cause another person to
18 cause the death of John Doe Number One, Gasper Ferreri, Junior
19 in violation of New York State law.

20 Under New York State law, it is illegal for a person
21 with intent that another person engage in a murder, to
22 solicit, request, command, importune or otherwise attempt to
23 cause such person to engage in such conduct.

24 In order to prove that the defendant solicited the
25 murder of Gasper Ferreri, Junior, the government must

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1 establish the following elements of the crime beyond a
2 reasonable doubt. First, that the defendant solicited,
3 requested, commanded, importuned or otherwise attempted to
4 cause another person to murder Gasper Ferreri, Junior and,
5 second, that the defendant intended the other person to cause
6 the death of Gasper Ferreri, Junior.

7 It does not matter whether or not the murder was
8 actually committed, whether the defendant actually influenced
9 the other person to commit it or attempt to commit it or
10 whether the other person was incapable of committing the
11 murder because he was incompetent or lacked the required
12 mental state.

13 Racketeering Act Five is also charged under an
14 aiding and abetting theory. Thus, you may find Racketeering
15 Act Five proven if you find that the defendant aided and
16 abetted another person in soliciting the murder of Gasper
17 Ferreri, Junior. I previously instructed you on aiding and
18 abetting under New York State law and you must apply that
19 instruction here.

20 I will now instruct you on Racketeering Act Six.
21 That alleges that the defendant committed attempted robbery in
22 violation of New York State law. If you find, beyond a
23 reasonable doubt, that the defendant agreed that he or a
24 co-conspirator would commit this crime, then you may find that
25 the government has proven Racketeering Act Six. But if you do

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1 not unanimously find that the government made such an
2 agreement, then you cannot find that the government has proven
3 Racketeering Act Six.

4 Racketeering Act Six reads as follows. Between
5 approximately January of 1984 and December of 1986, the
6 defendant, together with others, did knowingly and
7 intentionally attempt to steal property by robbery in that the
8 defendant and others attempted to forcibly steal property,
9 specifically, United States currency, from one or more
10 employees of an armored car business in violation of New York
11 State law.

12 Attempted robbery is defined as knowingly and
13 intentionally attempting to commit robbery. I have already
14 instructed you on the law of robbery under New York State law
15 and you must apply those instructions here. I will now
16 explain "attempt" under New York State law. Under New York
17 State law, a person is guilty of an attempt to commit a crime
18 when, with the intent to commit a crime, he engages in conduct
19 which tends to effect the commission of such crime.

20 Therefore, in order for you to find that the
21 defendant committed the crime of attempted robbery, the
22 government must prove beyond a reasonable doubt the following
23 two elements: First, that the defendant intended that the
24 alleged robbery would be committed; and, second, that acting
25 with such intent, the defendant engaged in conduct which

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1 tended to effect the commission of the robbery.

2 Intent means a conscious objective or purpose.

3 Thus, a person acts with intent to commit a crime when his
4 conscious objective or purpose is to commit that crime.

5 Conduct tends to effect the commission of a crime if
6 it comes dangerously close or very near to completion of the
7 intended crime. This means doing an act or acts directed
8 toward the accomplishment of the robbery. Such conduct does
9 not have to be the last act necessary to effect the commission
10 of the robbery, but must be conduct which constitutes a
11 substantial step toward the commission of the robbery. The
12 required conduct must be related to and directed toward the
13 accomplishment of the robbery, conduct which goes beyond mere
14 preparation and planning, conduct so related to the commission
15 of the robbery that in all reasonable probability, the robbery
16 would have been committed but for some interference,
17 intervention or other circumstances.

18 Racketeering Act Six is also charged under an aiding
19 and abetting theory. Thus, you may find Racketeering Act Six
20 proven if you find that the defendant aided and abetted
21 another person in attempting to commit the robbery of the
22 armored car. I previously instructed you on aiding and
23 abetting under New York State law and you must apply that
24 instruction here.

25 I will now instruct you on Racketeering Act Seven.

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1 That alleges three separate crimes: Robbery and robbery
2 conspiracy under federal law and robbery under New York State
3 law. If you unanimously find, beyond a reasonable doubt, that
4 the defendant agreed that he or a co-conspirator would commit
5 any one of these crimes, then you may find that the government
6 has proven Racketeering Act Seven. But if you do not find
7 that the defendant knowingly and intentionally made such an
8 agreement, then you cannot find that the government has proven
9 Racketeering Act Seven.

10 Racketeering Act Seven (B) reads as follows.
11 Between approximately February 1, 1984 and February 27, 1984,
12 the defendant Vincent Asaro, together with others, did
13 knowingly and intentionally obstruct, delay and affect
14 commerce and the movement of articles and commodities in
15 commerce, by robbery, that is the robbery of gold salts from
16 an employee of Federal Express in violation of federal law.

17 Racketeering Act Seven (B) alleges that the
18 defendant committed robbery in violation of federal law, or
19 aided and abetted that robbery. I have already instructed you
20 on the federal law of robbery in connection with Racketeering
21 Act Three (B), as well as the federal law of aiding and
22 abetting. When considering Racketeering Act Seven (B), you
23 must apply those instructions here.

24 Racketeering Act Seven (A) reads that between
25 approximately February 1st and 27 of 1984, the defendant

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1 Vincent Asaro, together with others, did knowingly and
2 intentionally conspire to obstruct, delay and affect commerce
3 and the movement of articles and commodities in commerce by
4 robbery, to wit, the robbery of gold salts from an employee of
5 Federal Express, in violation of federal law.

6 I previously instructed you on the federal law of
7 robbery and robbery conspiracy in connection with my
8 instructions on Racketeering Acts Three (A) and (B). In
9 considering Racketeering Act Seven (A), you must apply those
10 same instructions here.

11 Racketeering Act Seven (C) reads as follows.
12 Between approximately February 1st and 27 of 1984, the
13 defendant Vincent Asaro, together with others, knowingly and
14 intentionally stole property by robbery, in that the defendant
15 and others forcibly stole property, that is gold salts, from
16 an employee of Federal Express in violation of New York State
17 law.

18 Again, I instructed you on New York State law of
19 robbery and aiding and abetting when I instructed you on
20 Racketeering Act Three (C), the Lufthansa heist. When
21 considering Racketeering Act Seven (C), you must apply those
22 same instructions here.

23 I will now instruct you on Racketeering Act Eight.
24 Racketeering Act Eight alleges three separate crimes: Two
25 under federal law, and one under New York State law, all

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1 relating to John Zaffarano, identified in the indictment as
2 John Doe Number Two. Racketeering Act Eight (A) alleges that
3 the defendant conspired to extort him in violation of federal
4 law, eight (B) alleges that the defendant extorted him under
5 federal law, and Eight (C) alleges that the defendant
6 conspired to extort him under New York State law. If you
7 unanimously find, beyond a reasonable doubt that the defendant
8 agreed that he or a co-conspirator would commit any of these
9 crimes, then you may find that the government has proven
10 Racketeering Act Eight. But if you do not find that the
11 defendant made such an agreement, then you cannot find that
12 the government has proven Racketeering Act Eight.

13 I instruct you that the crime of extortion in
14 violation of federal law that is charged in this racketeering
15 act is different from the crimes of extortionate extensions
16 and collections of credit under federal law charged in
17 Racketeering Act One. Because the crime of extortion alleged
18 here violates a federal criminal law that is different from
19 those charged in Racketeering Act One, the crime has, as you
20 will learn, different elements. Again, for each analysis, I
21 will first instruct you on the law of this type of federal
22 extortion.

23 Racketeering Act Eight (B) reads between
24 approximately January 1st of 1985 and January 1st of 1989, the
25 defendant Vincent Asaro together with others did knowingly and

Charge of the Court

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1 intentionally obstruct, delay and affect commerce, and the
2 movement of articles and commodities in commerce by extortion,
3 in that the defendant and others obtained property,
4 specifically proceeds from the sale of a pornography business
5 and related properties from John Doe Number Two, John
6 Zaffarano, with his consent, which consent was induced by
7 wrongful use of actual and threatened force, violence and
8 fear, in violation of federal law.

9 (Continued on next page.)

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CMH

OCR

RMR

CRR

FCRR

- Charge -

3838

1 Extortion is the obtaining of property from another,
2 with his consent, induced by wrongful use of actual or
3 threatened force, violence or fear. The federal law provides
4 that:

5 Whoever in any way or degree obstructs, delays, or
6 affects commerce or the movement of an article or commodity in
7 commerce, by... extortion or attempts or conspires to do so...
8 commits a crime.

9 In order to meet its burden of proof that the
10 defendant committed extortion in violation of federal law, the
11 government must establish beyond a reasonable doubt each of
12 the following three elements:

13 First: That the defendant obtained the property of
14 another;

15 Second: That the defendant obtained this property
16 with the alleged victim's consent, but that this consent was
17 compelled by the wrongful use or threat of force, violence, or
18 fear; and

19 Third: That as a result of the defendant's actions,
20 interstate on foreign commerce or an item moving in interstate
21 or commerce, was delayed, obstructed or affected in any way or
22 degree.

23 I will now further explain these elements.

24 First, the person must have obtained the property of
25 another person for himself, or for another person or persons.

- Charge -

3839

1 A "person" includes an organization, such as a
2 corporation or group of people acting together as a formal or
3 informal entity.

4 "Property" can be both tangible, such as money, and
5 intangible, such as ownership interest in a business or other
6 asset.

7 Second, the defendant must have obtained property by
8 using the unlawful means charged. It is not necessary that
9 the government prove that force, violence and fear were all
10 used or threatened. The government satisfies its burden of
11 proving an unlawful taking if it proves that any of these
12 means was used or threatened.

13 In considering whether a defendant, used or
14 threatened to use force, violence or fear, you should give
15 those words their common and ordinary meaning, and understand
16 them as you would in your everyday lives.

17 The use or threat of force, violence or fear is
18 unlawful, if it is aimed at causing economic or physical
19 injury, either to the person or entity at whom the extortion
20 is directed, or to a third party. A threat may be made
21 verbally, directly or by implication. Whether a statement or
22 physical gesture by a defendant actually was a threat, depends
23 on the surrounding facts. A threat by implication means a
24 threat that is not directly stated, but is so understood from
25 the surrounding facts and circumstances.

- Charge -

3840

1 In the case of economic injury, the mere voluntary
2 payment of money, unaccompanied by any fear of economic
3 injury, would not constitute extortion. Rather, you must find
4 that the victim reasonably believed that the defendant had the
5 power to harm the victim and that the defendant would use that
6 power to harm the victim financially.

7 A person may be extorted of an asset even if he
8 obtained the asset illegally.

9 Fear exists if a victim experiences anxiety,
10 concern, or worry over expected personal harm or business
11 loss, or over financial or job security, as a result of the
12 acts of the defendant.

13 The proof must establish that the victim reasonably
14 believed:

15 First, that the defendant had the power to harm the
16 victim; and second, that the defendant might exercise that
17 power to the victim's detriment. The conduct or statements of
18 the defendant, must be such as would make a reasonable person
19 fearful. It is not necessary that the fear be the consequence
20 of a direct threat. It is sufficient that the surrounding
21 circumstances render the fear reasonable.

22 It is not necessary that the government prove that
23 the fear of physical or economic injury was the consequence of
24 a threat made by the defendant. Nor is it necessary that the
25 defendant actually created the fear in the mind of the victim,

- Charge -

3841

1 or was responsible for creating that fear. It is enough that
2 the defendant exploited or attempted to exploit fear that he
3 knew had been created by one or more persons or groups, and
4 thereby wrongfully obtained tangible or intangible property.

5 You may consider the relationship between the
6 defendant and the victim as well as all other circumstances in
7 deciding whether the element of fear exists. A generally
8 friendly relationship between the parties does not necessarily
9 negate fear.

10 You may find that a victim yielded to extortionate
11 demands out of fear of physical or economic injury, even if
12 the victim stated that he was not in fear, but there must be
13 oath are evidence proving that, notwithstanding the victim's
14 denial of fear, he acquiesced to the demand for payment of
15 money or delivery of property out of fear; and, the alleged
16 victim's denial of fear was itself the product of fear.

17 You may find that Racketeering Act Eight (B), has
18 been proven even if the defendant did not succeed in
19 instilling fear in the victim, provided that you find that the
20 defendant intended to instill fear and engaged in conduct that
21 he understood would be reasonably likely to have such an
22 effect on someone in the position of victim.

23 Third, I previously instructed you on the third
24 element, that the defendant's actions have an effect on
25 interstate commerce -- in connection with Racketeering Act

- Charge -

3842

1 3(B), you must apply those instructions here.

2 Racketeering Act Eight (B) is also charged under an
3 aiding and abetting theory. Thus, you may find Racketeering
4 Act Eight (B) proven if you find that the defendant aided and
5 abetted another person in extorting property from John
6 Zaffarano. I previously instructed you on the federal law of
7 aiding and abetting and you must apply that instruction here.

8 I will now turn to Racketeering Act Eight (A), which
9 alleges that the defendant conspired to commit extortion in
10 violation of federal law.

11 It reads as follows: Between approximately
12 January 1, 1985, and January 1, 1989, the defendant together
13 with others did knowingly and intentionally conspire to
14 obstruct, delay and affect commerce and the movement of
15 articles and commodities in commerce, by extortion, in that
16 the defendant and others agreed to obtain property, to wit:
17 Proceeds from the sales of a pornography business and related
18 properties, from John Doe #2, John Zaffarano... with his
19 consent, which consent was to be induced by wrongful use of
20 actual and threatened force, violence, and fear, in violation
21 of federal law.

22 As I explained when I instructed you on the federal
23 conspiracy law, in order to find that this racketeering act
24 has been proven, you must find that two or more persons agreed
25 to extort property from John Zaffarano in violation of federal

- Charge -

3843

1 law, as that has been explained to you in Racketeering Act
2 Eight (B). You must then determine whether the defendant
3 knowingly and intentionally became a member of that
4 conspiracy. In assessing whether this conspiracy has been
5 proven, you must apply my earlier instructions on the law of
6 federal conspiracy.

7 Racketeering Act Eight (C) reads as follows:

8 That between approximately January 1st of 1985 and
9 January 1, 1989, the defendant and others did knowingly and
10 intentionally conspire to steal property by extortion, in that
11 the defendant and others agreed to be obtain property,
12 specifically United States currency, by compelling and
13 inducing John Doe #2, John Zaffarano, to deliver such property
14 by instilling in him a fear that, if the property were not so
15 delivered, one or more persons would cause physical injury to
16 one or more persons in the future, and cause damage to
17 property, in violation of New York State law.

18 I previously instructed you on the law of extortion
19 and extortion conspiracy under New York State law in
20 connection with my charge of Racketeering Acts One (E) and
21 (F), and you must apply those instructions here.

22 I will now instruct you on Racketeering Act Nine.

23 That alleges that the defendant extorted Guy Gralto,
24 under both federal and state law. If you find that the
25 defendant agreed that he or a coconspirator would commit any

- Charge -

3844

1 of these crimes, then you may find that the government has
2 proven Racketeering Act Nine. But if you do not unanimously
3 find that the defendant made such an agreement, then you
4 cannot find that the government has proven Racketeering Act
5 Nine. I note that the type of federal extortion charged in
6 this racketeering act violates the same federal law as
7 extortion alleged in Racketeering Act Eight. The crimes thus
8 have I den tie call elements.

9 Racketeering Act Nine (B) reads, that between
10 approximately January 1, 1993, and February 15, 1995, the
11 defendant, Vincent Asaro, together with others, did knowingly
12 and intentionally obstruct, delay and affect commerce and the
13 movement of articles and commodities in commerce by extortion,
14 in that the defendant and others obtained property,
15 specifically proceeds from an auto body business from John Doe
16 #3, Guy Gralto, with his consent, which consent was induced by
17 wrongful use of actual and threatened force, violence and
18 fear, in violation of federal law.

19 Racketeering Act Nine (B), alleges that the
20 defendant committed the crime of extortion in violation of
21 federal law. I have already instructed you on the law of this
22 type of extortion under federal law in connection with my
23 charge on Racketeering Act Eight (B). You must apply those
24 same instructions here.

25 Racketeering Act Nine (B) is also charged under an

- Charge -

3845

1 aiding and abetting theory. Thus, you may find Racketeering
2 Act Nine (B) proven, if you find that the defendant aided and
3 abetted another person in committing the extortion of Guy
4 Gralto. I previously instructed you on the federal law of
5 aiding and abetting and you must apply that instruction here.

6 Also, note that there is no Racketeering Act Nine
7 (A) and Nine (C), this is intentional and not a mistake in the
8 instructions.

9 Racketeering Act Nine (D) reads, between
10 approximately January 1, 1993, and February 15, 1995, the
11 defendant, together with others, did knowingly and
12 intentionally steal property by extortion, in that the
13 defendant and others, obtained property, that is United States
14 currency, by compelling and inducing John Doe #3, Guy Gralto,
15 to deliver such property by instilling in him a fear that, if
16 the property were not so delivered, one or more persons would
17 cause physical damage to one or more persons in the future,
18 and cause damage to property in violation of New York State
19 law.

20 I previously instructed you on the law of extortion
21 under New York State law and you must apply those instructions
22 here.

23 Racketeering Act Nine (D) is also charged under an
24 aiding and abetting theory. Thus, you may find Racketeering
25 Act Nine (D) proven, if you find the defendant aided and

- Charge -

3846

1 abetted another person in the extortion of Guy Gralto. I
2 previously instructed you on the law of aiding and abetting
3 under New York State law and you must apply that instruction
4 here.

5 I will now instruct you on Racketeering Act Ten.

6 Racketeering Act Ten alleges that the defendant
7 operated or participated in the operation of an illegal
8 gambling business, in violation of federal law. It reads as
9 follows:

10 Between approximately April 1994 and December of
11 2002, the defendant and others did knowingly and intentionally
12 conduct, finance, manage, supervise, direct, and own all or
13 part of an illegal gambling business, that is a gambling
14 business involving bookmaking, which operated in violation of
15 New York State law, which involved five or more persons who
16 conducted, financed, managed, supervised, directed and owned
17 all or part of each business and which remained in
18 substantially continuous operation for a period in excess of
19 30 days, and had a gross revenue of at least \$2,000 in any
20 single day, in violation of federal law.

21 The relevant federal law provides that, whoever
22 conducts, finances, manages, supervises, directs, or owns all
23 or part of an illegal gambling business shall be guilty of a
24 crime.

25 In order to prove that the defendant conducted an

- Charge -

3847

1 illegal gambling business under federal law, the government
2 must prove beyond a reasonable doubt each of the following
3 three elements:

4 First, that the gambling business charged in the
5 indictment violated the laws of the State of New York;

6 Second, that the gambling business was in
7 substantially continuous operation for a period in excess of
8 30 days, or had gross revenues of \$2,000 or more in any one
9 day; and

10 Third, that five or more persons, including the
11 defendant, knowingly conducted, financed, managed, supervised,
12 directed or owned the gambling business.

13 I will now explain each of these elements in greater
14 detail.

15 The first element the government must prove beyond a
16 reasonable doubt is that the gambling business alleged in the
17 indictment violated the laws of the State of New York. The
18 indictment alleges that the gambling business in question
19 involved the use of bookmaking. "Bookmaking" under New York
20 law means "advancing gambling activity by unlawfully accepting
21 bets from members of the public as a business, rather than in
22 a casual or personal fashion, upon the outcomes of future
23 contingent events."

24 New York law makes it illegal to knowingly advance
25 or profit from unlawful gambling activity. Some of these

- Charge -

3848

1 terms have a special meaning.

2 Under New York State law, "unlawful", means not
3 specifically authorized by law. A person engages in gambling
4 activity when he stakes or risks something of value upon a
5 future contingent event not under his control or influence,
6 upon an agreement or understanding that he will receive
7 something of value in the event of a certain outcome.

8 A person "advances gambling activity", when, acting
9 other than as a player, he materially aids any form of
10 gambling activity. Such conduct includes creating or
11 establishing the particular game or activity involved,
12 acquiring or maintaining premises or paraphernalia for it,
13 soliciting or inducing persons to participate, conducting the
14 playing phases, arranging any financial or recording phases,
15 or engaging in conduct supporting any other phase of its
16 operation.

17 A person also "advances gambling activity", when,
18 having substantial property or other authoritative control
19 over premises being used with his knowledge for purposes of
20 gambling activity, he permits such to occur or continue or
21 makes no effort to prevent its occurrence or continuation.

22 A person profits from gambling activity when, other
23 than as a player, he accepts or receives money or other
24 property pursuant to an agreement or understanding with any
25 person whereby he participants or is to participate in the

- Charge -

3849

1 proceeds of gambling activity.

2 "Player" means a person who engages in any form of
3 gambling solely as a contestant or bettor, without receiving
4 or becoming entitled to receive any profit therefrom, other
5 than personal gambling winnings, and without otherwise
6 rendering any material assistance to the establishment,
7 conduct or operation of the particular gambling activity. A
8 person who gambles at a social game of chance on equal terms
9 with other participants therein does not otherwise render
10 material assistance to the establishment, conduct or operation
11 thereof by performing, without fee or remuneration, acts
12 directed toward the arrangement or facilitation of the game,
13 such as inviting persons to play, permitting the use of
14 premises therefor and supplying cards or other equipment used
15 therein.

16 The second element the government must prove beyond
17 a reasonable doubt is that the gambling business was in
18 substantially continuous operation for a period in excess of
19 30 days or had gross revenues of \$2,000 or more in any one
20 day.

21 To establish that gambling business was in
22 substantially continuous operation for a period in excess of
23 30 days, the government is not required to prove that the
24 business operated on an everyday basis throughout the entire
25 period. Instead, the government must prove that over some

- Charge -

3850

1 period in excess of thirty days, the gambling business was
2 conducted with sufficient regularity that it existed as an
3 ongoing business rather than as a casual non-business
4 activity. The government is not required to prove that the
5 defendant knew that the business was in substantial continuous
6 operation.

7 (Transcript continues on next page.)
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Charge of the Jury

3851

1 (Continuing)

2 THE COURT: It is for you to determine the specific
3 period when a business was in substantially continuous
4 operation. If that period is longer than 30 days, then you
5 should go on to the next element. If that period was 30 days
6 or less, then you should you consider the alternate theory by
7 which the second element may be proved, namely, by proving
8 beyond a reasonable doubt that the gambling business had gross
9 revenues of \$2,000 or more in any one day.

10 For the purposes of this element, gross revenues
11 means the total amount wagered in one day regardless of how
12 much was paid out to bettors as winnings. The Government is
13 not required to prove that the defendant knew that the
14 business had gross revenues of \$2,000 or more in any one day.

15 The third element the Government must prove beyond a
16 reasonable doubt is that five or more persons, including the
17 defendant, knowingly conducted, financed, managed, supervised,
18 directed, or owned the gambling business during the period
19 when you found it was in substantially continuous operation.

20 The terms financed, managed, supervised, directed
21 and owned, should be given their everyday, ordinary meanings,
22 however, I would like to explain the term conducted in more
23 detail. To conduct a gambling business means to form any act,
24 function or duty which is necessary or helpful in the regular
25 operation of the business. You may find that a person

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1 conducted the gambling business even though he was a low-level
2 employee having no part in management or control of the
3 business and no share in its profits. This includes any
4 employee who was directly involved in gambling activity, or
5 anyone who knowingly assisted in the operation of the gambling
6 business. However, someone whose only involvement with the
7 business was as a customer or bettor is not conducting the
8 business and cannot be counted as one of the five.

9 Five or more people, including the defendant, must
10 have participated during the period you found that the
11 gambling business was in substantially continuous operation.
12 The Government does not have to prove that all five were
13 engaged at any particular time in conducting the business, as
14 long as it proves that all five participated in the business
15 during the period you identified. It is not required that all
16 five be charged in the indictment.

17 Each of the five persons must have knowingly
18 participated in the business. This means that they knew they
19 were involved in conducting a gambling business, and were not
20 involved by accident, negligence or mistake. The Government
21 does not have to prove that the defendant knew that the
22 gambling business was illegal.

23 Racketeering Act Ten is also charged under an aiding
24 and abetting theory, which is that the defendant aided and
25 abetted the operation of the illegal gambling operation

Charge of the Jury

3853

1 charged. Thus, you may find Racketeering Act Ten proven if
2 you find that the defendant aided and abetted the operation of
3 the illegal gambling operation charged. I previously
4 instructed you on the law of aiding and abetting and you must
5 apply those instructions here.

6 I will now instruct you on Racketeering Act Eleven.
7 It alleges two separate crimes under New York State law:
8 Conspiracy to extort a business associate of defendant's
9 daughter Tanya, identified in the indictment as John Doe #4
10 and extortion of this individual. If you find, beyond a
11 reasonable doubt, that the defendant agreed that he or a
12 co-conspirator would commit either of these crimes, then you
13 may find the Government has proven Racketeering Act Eleven.
14 But if do you not unanimously find that the defendant made
15 such an agreement, you cannot find that the Government has
16 proven Racketeering Act Eleven.

17 Racketeering Act Eleven (A) charges that between
18 approximately January and December of 2006, the defendant
19 Vincent Asaro, together with others, did knowingly and
20 intentionally conspire to steal property by extortion, in that
21 the defendant and others agreed to obtain property, that is,
22 United States currency, by compelling and inducing
23 John Doe #4, a business associate of defendant's daughter
24 Tanya, to deliver such property by instilling in him a fear
25 that, if the property were not so delivered, one or more

Charge of the Jury

3854

1 persons would cause physical injury to one or more persons in
2 the future and cause damage to property, in violation of
3 New York State law.

4 I previously instructed you on the law of extortion
5 conspiracy under New York State law in connection with
6 Racketeering Act One (E) and the law of conspiracy under
7 New York State law and you must apply those instructions here.

8 Racketeering Act Eleven (B) charges that between
9 approximately January and December of 2006, the defendant,
10 together with others, did knowingly and intentionally steal
11 property by extortion, in that defendant and others obtained
12 property, specifically United States currency, by compelling
13 and inducing John Doe #4, a business associate of defendant's
14 daughter Tanya, to deliver such property by instilling in him
15 a fear that, if the property were not so delivered, one or
16 more persons would cause physical injury to one or more
17 persons in the future and cause damage to property, in
18 violation of New York State law.

19 I previously instructed you as to the law of
20 extortion under New York State law, in connection with my
21 charge on Racketeering Act One (F) and you must apply those
22 instructions here.

23 Attempted extortion is a lesser included offense
24 within extortion. This means that you may find Racketeering
25 Act Eleven (B) proven if you find that the defendant attempted

Charge of the Jury

3855

1 to steal property by extortion, in violation of Racketeering
2 Act Eleven (B), but did not actually complete the crime. If
3 your verdict is that the crime of extortion charged in
4 Racketeering Act Eleven (B) is not proven, then you will
5 consider whether the defendant committed, or agreed to the
6 commission of, attempted extortion. But if your verdict is
7 that Racketeering Act Eleven (B) has been proven, then you
8 will not consider attempted extortion. I previously
9 instructed you on attempt under New York State law in
10 connection with Racketeering Act Six and you must apply those
11 instructions mere.

12 Racketeering Act Eleven (B) is also charged under an
13 aiding and abetting theory. Thus, you may find Racketeering
14 Act Eleven (B) proven if you find that defendant aided and
15 abetted another person in extorting, or attempting to extort,
16 the business associate of defendant's daughter Tanya. I
17 previously instructed you on aiding and abetting under
18 New York State law and you must apply that instruction here.

19 I will now instruct you on Racketeering Act Twelve.
20 It alleges that between approximately September of 2007 and
21 March of 2008, the defendant operated or participated in the
22 operation of an illegal gambling business, in violation of
23 Federal law. It reads that:

24 Between approximately September 1st of 2007 and
25 March 1st of 2008 the defendant, together with others, did

Charge of the Jury

3856

1 knowingly and intentionally conduct, finance, manage,
2 supervise, direct and own all or part of an illegal gambling
3 business, specifically a gambling business involving
4 book-making, which operated in violation of New York State
5 law, which involved five or more persons who conducted,
6 financed, managed, supervise, directed and owned all or part
7 of such business and which remained in substantially
8 continuous operation for a period in excess of 30 days and had
9 a gross revenue of at least \$2,000 in any single day, in
10 violation of Federal law.

11 I have already instructed you on the law applicable
12 to conducting an illegal gambling business under Federal law
13 in my instructions pertaining to Racketeering Act Ten. In
14 considering whether the Government has met its burden of
15 proving Racketeering Act Twelve, you must apply those same
16 instructions here.

17 Racketeering Act Twelve is also charged under an
18 aiding and abetting theory. I previously instructed you on
19 the law of aiding and abetting the operation of an illegal
20 gambling operation in connection with my charge on
21 Racketeering Act Ten and you must apply those instructions
22 here.

23 I will now instruct you on Racketeering Act
24 Thirteen. It alleges that the defendant, or a person he aided
25 and abetted, stole property by extortion from Carmine

Charge of the Jury

3857

1 Muscarella, identified in the indictment as John Doe #5, in
2 violation of New York State law. It charges specifically that
3 between October 1st and November 4th of 2010, the defendant
4 and others, knowingly and intentionally stole property by
5 extortion in that the defendant and others obtained property,
6 specifically currency, by compelling and inducing John Doe #5,
7 Carmine Muscarella, to deliver such property by instilling in
8 him a fear that, if the property were not so delivered, one or
9 more persons would cause physical injury to one or more
10 persons in the future and cause damage to property, in
11 violation of New York State law.

12 I previously instructed you on the law of extortion
13 under New York State law in connection with my charge on
14 Racketeering Act One (F) and you must apply those instructions
15 here.

16 Racketeering Act Thirteen is also charged under an
17 aiding and abetting theory. Now, you may find Racketeering
18 Act Thirteen proven if you find that the defendant aided and
19 abetted another person in extorting Carmine Muscarella. I
20 previously instructed you on aiding and abetting under
21 New York State law and you must apply those instructions here.

22 I will now instruct you on Racketeering Act
23 Fourteen. It alleges four different crimes against Robert
24 Cotrone, identified in the indictment at John Doe #6. Acts
25 Fourteen (A) and (B) allege extortionate collection of credit

Charge of the Jury

3858

1 conspiracy and extortionate collection of credit under Federal
2 law, and acts (C) and (D) allege extortion conspiracy and
3 extortion under New York State law. If you find that the
4 defendant agreed that he or a co-conspirator would commit any
5 of these crimes, then you may find that the Government has
6 proven Racketeering Act Fourteen. But if do you not
7 unanimously find that the defendant made such an agreement,
8 then you cannot find that the Government has proven
9 Racketeering Act Fourteen.

10 Racketeering Act Fourteen (A) charges that between
11 approximately March 1st and June 30th of 2013, the defendant,
12 Vincent Asaro, together with others, did knowingly and
13 intentionally conspire to participate in the use of
14 extortionate means to collect and attempt to collect one or
15 more extensions of credit from one or more individuals,
16 specifically John Doe #4, Robert Cotrone, in violation of
17 Federal law.

18 I previously instructed you on the law of
19 extortionate collection of credit conspiracy under Federal law
20 as part of my instructions regarding Racketeering Act One (C)
21 and you must apply those instructions again mere.

22 Racketeering Act Fourteen (B) charges that between
23 approximately March 1 and June 30th of 2013, both dates being
24 approximate and inclusive, defendant, together with others,
25 did knowingly and intentionally participate in the use of

Charge of the Jury

3859

1 extortionate means to collect and attempt to collect one or
2 more extensions of credit from one or more individuals, to
3 wit: John Doe #6, Robert Cotrone, in violation of Federal
4 law.

5 I previously instructed you on the law of
6 extortionate collection of credit in connection with my charge
7 on Racketeering Act One (D), you must apply those instructions
8 here.

9 Racketeering Act Fourteen (B) also charges under an
10 aiding and abetting theory. You may find Racketeering Act
11 Fourteen (B) proven if you find that the defendant aided and
12 abetted another person in committing extortionate collection
13 of credit. I previously instructed you on the law of aiding
14 and abetting under Federal law and you must apply those
15 instructions here.

16 Fourteen (C) charges that between approximately
17 March 1st and June 30th of 2013, the defendant and others did
18 knowingly and intentionally conspire to steal property by
19 extortion in that the defendant and others agreed to obtain
20 property, that is United States currency, by compelling and
21 inducing John Doe #6, Robert Cotrone, to deliver such property
22 by instilling in him a fear that, if property were not so
23 delivered, one or more persons would cause physical injury to
24 one or more persons in the future and cause damage to
25 property, in violation of New York State law.

Charge of the Jury

3860

1 I have already instructed you on the law of
2 conspiracy to extort in connection with my instructions
3 concerning Racketeering Act One (E), you must apply those
4 instructions here.

5 Racketeering Act Fourteen (D) charges that between
6 approximately March 1st and June 30th of 2013, the defendant
7 and others, knowingly and intentionally stole property by
8 extortion, in that the defendant and others obtained property,
9 specifically United States currency, by compelling and
10 inducing John Doe #6, Robert Cotrone, to deliver such property
11 by instilling in him a fear that, if property were not so
12 delivered, one or more persons would cause physical damage to
13 one or more persons in the near future and cause damage to
14 property, in violation of New York State law.

15 I previously instructed you on the crime of
16 extortion under New York State law, in connection with my
17 instructions concerning Racketeering Act One (D), you must
18 apply though instructions here.

19 Racketeering Act Fourteen (D) is also charged under
20 an aiding and abetting theory. Thus, you may find
21 Racketeering Act Fourteen (D) proven if you find that the
22 defendant aided and abetted another person in this extortion.

23 I previously instructed you on aiding and abetting under
24 New York State law and you must apply that instruction here.

25 The indictment charges the defendant with two

Charge of the Jury

3861

1 substantive counts in addition to the racketeering conspiracy
2 charged in Count One. These two counts, involving
3 extortionate collection of credit conspiracy and extortionate
4 collection of credit, respectively, of Robert Cotrone,
5 identified in the indictment as John Doe #6, are nearly
6 identical to the Federal crimes charged in racketeering acts
7 Fourteen (A) and (B). There is one important distinction,
8 however: Each of the Racketeering Acts alleges that the
9 defendant agreed that he or a co-conspirator would commit a
10 particular crime, while Counts Two and Three allege that the
11 defendant actually committed the charged crime himself or, in
12 the case of Count three, aided and abetted one or more others
13 to commit that crime.

14 Count two reads that on approximately March 1st to
15 June 30th of 2013, the defendant, together with others, did
16 knowingly and intentionally conspire to participate in the use
17 of extortionate means to collect and attempt to collect one or
18 more extensions of credit from one or more individuals,
19 specifically John Doe #6, Robert Cotrone, in violation of
20 Federal law.

21 I previously instructed you on the law of
22 extortionate collection of credit conspiracy under Federal law
23 as part of my instructions regarding Racketeering Act One (C)
24 and you must apply those instructions again here.

25 (Continued on following page.)

Charge of the Court

3862

1 THE COURT: Count Three reads that between
2 approximately March 1st and June 30, 2013, the defendant,
3 together with others, knowingly and intentionally participated
4 in the use of extortionate means to collect and attempt to
5 collect one or more extensions of credit from one or more
6 individuals, to wit, John Cotrone in violation of federal law.

7 I previously instructed on the law of extortionate
8 collection of credit under federal law as part of my
9 instructions regarding Racketeering Act One (D) and you must
10 apply those instructions.

11 Count Three is also charged under an aiding and
12 abetting theory. Thus, you may find the defendant guilty of
13 Count Three if you find the defendant aided and abetted
14 another person in committing extortionate collection of
15 credit. I previously instructed you on the law of aiding and
16 abetting under federal law and you must apply that instruction
17 here.

18 I have now outlined for you the rules of law
19 applicable to the charges in this case and the processes by
20 which you should weigh the evidence and determine the facts.
21 In a few minutes, you will retire to the jury room for your
22 deliberations.

23 Traditionally, juror number one acts as foreperson.
24 In order that your deliberations may proceed in an orderly
25 fashion, you must have a foreperson but, of course, the

Charge of the Court

3863

1 foreperson's vote is not entitled to greater weight than that
2 of any other juror.

3 Your function, to reach a fair conclusion from the
4 law and the evidence, is an important one. Your verdict must
5 be unanimous.

6 When you are in the jury room, you may now discuss
7 the case. It is, in fact, the duty of each of you to consult
8 with your fellow jurors and to deliberate with a view toward
9 reaching agreement on a verdict, if you can do so without
10 violating your individual judgment and your conscience. In
11 the course of your deliberations, no one should surrender
12 conscientious beliefs of what the truth is and what the weight
13 and effect of the evidence is. Moreover, each of you must
14 decide the case for yourself and not merely acquiesce in the
15 conclusion of your fellow jurors. Nevertheless, I do ask you
16 to examine the issue and the evidence before you with candor
17 and frankness and proper deference to and regard for the
18 opinions of one another. Remember that the parties and the
19 Court are relying upon you to give full and conscientious
20 deliberation and consideration to the issues and evidence
21 before you. By so doing, you carry out to the fullest your
22 oaths as jurors: Well and truly to try the issues of this
23 case and a true verdict render.

24 If it becomes necessary during your deliberations to
25 communicate with me for any reason, simply send me a note

Charge of the Court

3864

1 signed by your foreperson or by one or more other members of
2 the jury. No member of the jury should ever attempt to
3 communicate with me or with any court personnel by any means
4 other than in writing. I will not communicate with any member
5 of the jury on any subject touching on the merits of this case
6 other than in writing or orally here in open court.

7 If you wish to have some part of the testimony
8 repeated, or to see any of the exhibits, you may make that
9 request. If you request to see all or some of the exhibits,
10 we will send them into the jury room for you or make them
11 available to you here in open court. If you request to hear
12 certain testimony or see trial transcripts regarding any
13 matter, I will call you into court and have the court reporter
14 read those portions of the testimony to you or send responsive
15 portions of the trial transcript into the jury room. You can
16 have any of the testimony read back to you or made available
17 to you in transcript form. I suggest, however, that you be
18 specific in your requests so as to avoid hearing testimony or
19 receiving portions of the trial transcript that you do not
20 need to assist in your deliberations.

21 If, in the course of your deliberations, you wish
22 further help as to the law, or if you would like to hear any
23 further explanation as to the law, you may send me a note
24 telling me what you would like.

25 Bear in mind also that you are not to reveal to any

Charge of the Court

3865

1 person, not even in open court, how the jury stands,
2 numerically or otherwise, on the question of whether the
3 defendant is guilty or not guilty, until after you have
4 reached a unanimous verdict on each count. Any verdict you
5 reach must be unanimous as to each count.

6 When you have reached a verdict, simply send me a
7 note signed by your foreperson that you have reached a
8 verdict. Do not indicate in the note what the verdict is.

9 You must be prepared to render a verdict as to all
10 of the counts and racketeering acts charged. The verdict form
11 I have prepared indicates the charges as listed in the
12 indictment. Although I will provide each of you with a copy
13 of the verdict form, please recall that your unanimous verdict
14 must be recorded on the foreperson's verdict form. I will
15 also provide each of you with a copy of these instructions.
16 Please remember that you must follow these instructions as a
17 whole, and should not rely on any one portion in disregard of
18 remaining portions.

19 Before now asking you to retire to begin your
20 deliberations, let me first consult with counsel to be certain
21 that I have not overlooked anything.

22 (The following occurred at side bar.)

23 MS. ARGENTIERI: No problem.

24 THE COURT: I didn't miss anything?

25 MS. MACEDONIO: No.

Side Bar

3866

1 THE COURT: Would you prefer that I let them go
2 tonight and have them come in tomorrow morning to start
3 deliberating? That way, we can let the alternates go tonight?

4 MR. MACEDONIO: I think it makes more sense to do it
5 that way. I mean, they have to be exhausted.

6 MS. ARGENTIERI: I was actually thinking they would
7 just start. I mean I, kind of just want this to be over.

8 MS. MACEDONIO: I don't think they're going to
9 finish in half an hour.

10 MS. ARGENTIERI: I don't think so. If they have
11 things they want to do, elect a foreperson, they can, but if
12 you don't want to do this --

13 THE COURT: No. I am a little torn because I would
14 just like to keep going.

15 MS. ARGENTIERI: Well, I mean, it's not even
16 5 o'clock.

17 THE COURT: Yes. And they have a good half hour
18 that they can organize themselves.

19 MS. ARGENTIERI: Just get organized, what do you
20 need and we can start working on it tonight and then when they
21 come in in the morning, we can have it ready.

22 MS. MACEDONIO: I don't know if they're going to go
23 that far. Do you want to inquire of the jury?

24 MS. ARGENTIERI: No, I don't think so.

25 THE COURT: I don't think we ought to ask them. I

Side Bar

3867

1 think we ought to decide.

2 MS. MACEDONIO: My vote would be after this
3 extensive day and listening to the charge, with all due
4 respect, they must be exhausted.

5 MS. ARGENTIERI: I just feel -- I didn't realize
6 they were going to have Wednesday off.

7 THE COURT: They are going to have Wednesday off.

8 MS. ARGENTIERI: Right, that's what I mean. So it
9 is our preference --

10 THE COURT: Which concerns what's going to happen
11 over the next day and the next day and the next day, I
12 suppose, which makes me worry a little bit more about the
13 alternates.

14 MS. ARGENTIERI: Right. I mean, I know it does make
15 me worry. Is there any way we keep one of them or two?

16 THE COURT: Well, what we have to do is we have to
17 stick them in a room all by themselves and tell them not to
18 talk about the case and then if we should need one, we have to
19 instruct them to start deliberating again.

20 MS. ARGENTIERI: I just think if we kept one or two
21 until Thursday and made sure everybody made it back after
22 Wednesday, I would have some peace of mind about that.

23 MS. MACEDONIO: To the extent we're going to do
24 that, then we should let them go.

25 THE COURT: Yes. If we're going to keep any, then

Side Bar

3868

1 we are going to keep them all.

2 MS. ARGENTIERI: Okay.

3 THE COURT: Do you want me to keep them?

4 MS. ARGENTIERI: I kind of do. It's just such a
5 long trial. I mean, I don't want that to be the thing --

6 MS. MACEDONIO: I guess. I mean, they're here. I
7 mean, if we're keeping them, keeping them, does it make sense
8 then to put them in a room tonight?

9 MS. ARGENTIERI: Right. I don't know why that
10 matters. They're here until 5:30. It's not even 5 o'clock.

11 THE COURT: Okay. I'm going to tell the jurors to
12 deliberate.

13 MS. ARGENTIERI: Okay.

14 THE COURT: And then I will talk to the alternates.
15 Have you got a place to put them?

16 THE CLERK: I don't.

17 THE COURT: You don't have a place to put them?

18 MS. MACEDONIO: They can sit with us.

19 THE CLERK: I don't know what's available.

20 MS. ARGENTIERI: Well, I think the alternates could
21 go and just come back tomorrow. They're not deliberating
22 anyway. They could -- I guess they have to get on the bus.

23 THE COURT: They could go and come back tomorrow.

24 MS. ARGENTIERI: That's fine with me.

25 MS. MACEDONIO: I'm just not sure about their

Side Bar

3869

1 transportation issues.

2 THE COURT: It is the transportation problem.

3 MS. ARGENTIERI: There's also a spare witness room
4 over here where we've been storing witnesses.

5 THE CLERK: We can't put them there.

6 MS. MACEDONIO: You can have somebody guard them. I
7 mean, I think logistically, I think we're coming up with
8 issues as to why we should break.

9 THE COURT: Well, if everybody wants, we can keep
10 them, I think we're going to have to wait until tomorrow to do
11 that. We don't have a place to put them.

12 MS. ARGENTIERI: Can't they just stay here?

13 MS. MACEDONIO: And we all sit in silence for the
14 next half an hour?

15 MS. ARGENTIERI: We can go out in the hallway.

16 MS. MACEDONIO: They're going to watch who comes in
17 and out of the door?

18 THE COURT: Okay. Dennis is going to try to find a
19 place.

20 MS. ARGENTIERI: I really appreciate it.

21 (Pause.)

22 THE COURT: All right. So I am going to have just
23 the jury sworn. And send them out and then talk to the
24 alternates. Okay?

25 MS. ARGENTIERI: Okay. Sounds good.

CMH

OCR

RMR

CRR

FCRR

1 (In open court; side bar ends.)

2 THE COURT: Please swear the marshal.

3 THE CLERK: Please raise your right hand.

4 (Marshal sworn.)

5 THE COURT: Okay. Ladies and gentlemen, I am going
6 to ask the twelve of you who are jurors to retire to the jury
7 room to deliberate at this time. I'm going to ask the
8 alternates to stay so I can talk to them.

9 (Jurors exit; alternate jurors present.)

10 THE COURT: Please be seated.

11 What I am going to do in this case is ask you,
12 obviously a jury is a jury of twelve persons, but I have
13 spoken with the lawyers and we would very much like to have
14 you available in the event we should lose a juror. What this
15 means, obviously, is you continue not to talk about the case,
16 not to talk about the case with each other, not to talk about
17 the case on the way home with the other jurors, they shouldn't
18 be doing that anyway, stay to the end of the day and come back
19 in tomorrow. I appreciate that we are a drain on your time
20 but as you can tell, the trial has been lengthy and
21 complicated.

22 You have heard every single bit of evidence. Had
23 you been called upon to replace one of the jurors, you would
24 be in the jury room right now and we are concerned. You never
25 know what's going to happen.

Side Bar

3871

1 All right. So just do not talk about the case with
2 anybody. Dennis has found a place for you to wait. When I
3 call the jurors back in at the end of the trial day, I will
4 call you back in too. Okay. I thank you so much.

5 (Alternate jurors exit.)

6 Could I see the counsel at side bar just for a
7 moment?

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
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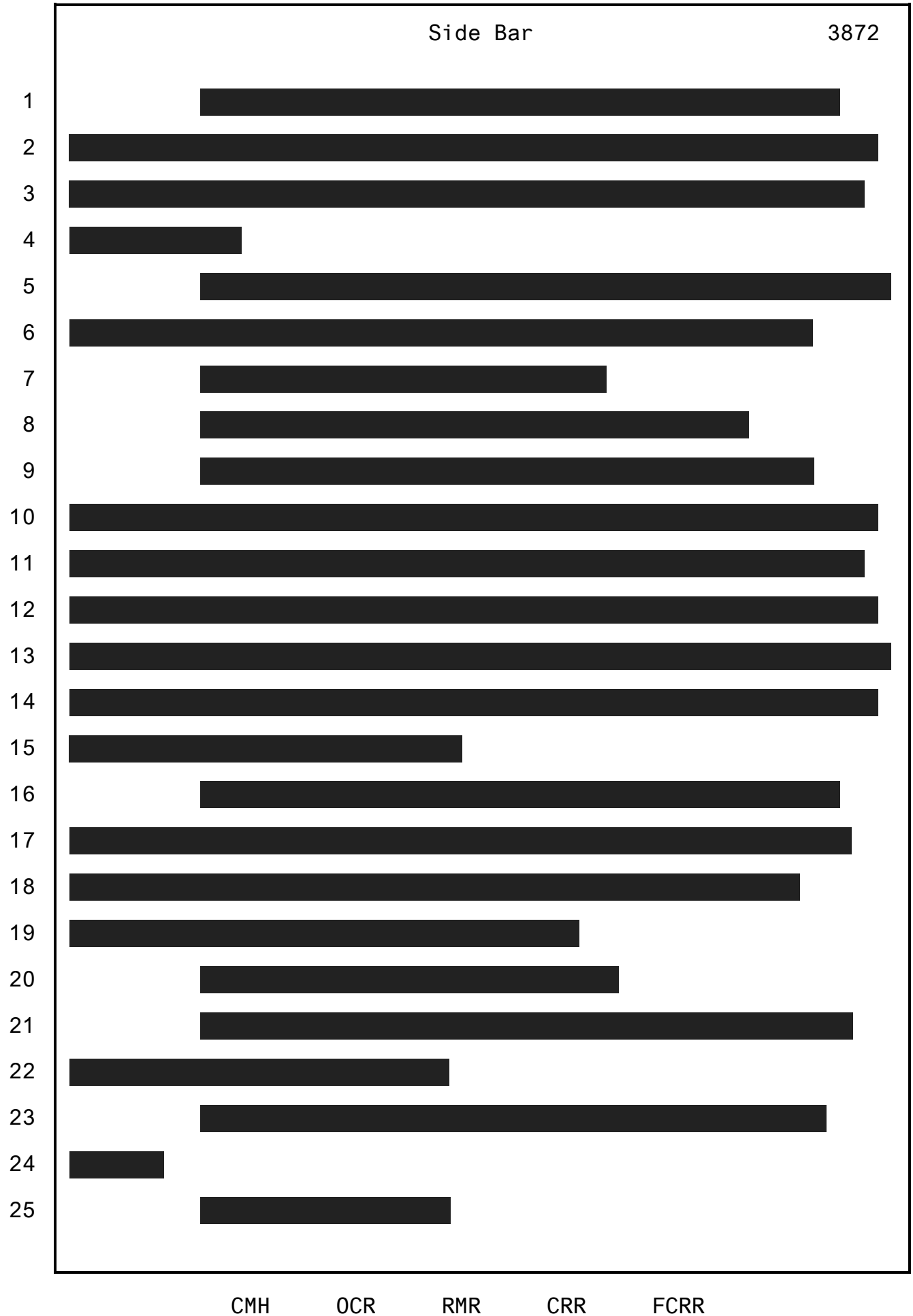
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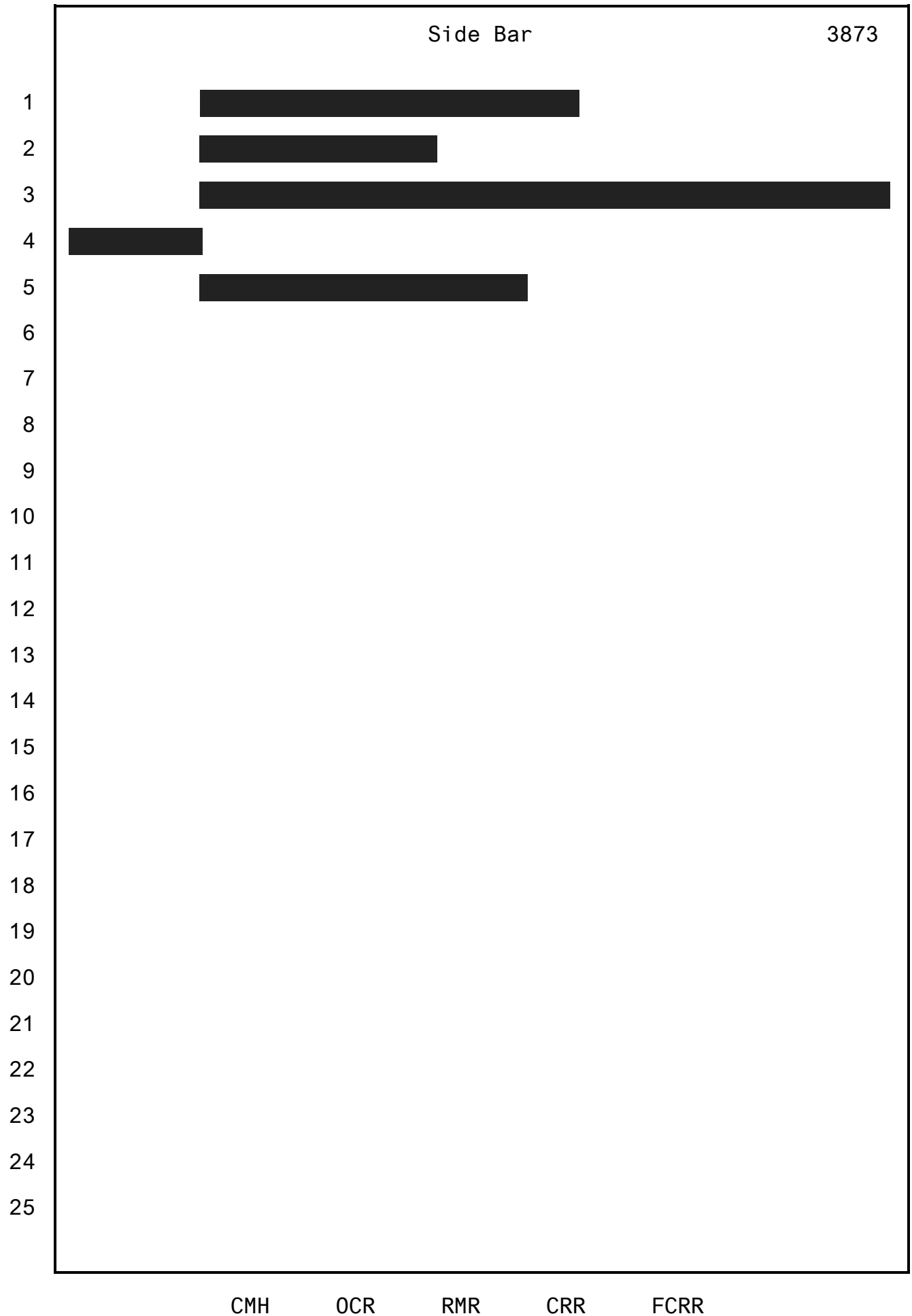
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RMR

CRR

FCRR





1 (Court resumes at 5:35 p.m.)

2 (In open court. Jury present. Alternate jurors not
3 present.)

4 THE COURT: Please be seated.

5 Ladies and gentlemen, it's the end of the day. I
6 know you have just barely begun so we are going to ask you to
7 return tomorrow morning at the regular time.

8 (Alternate jurors enter.)

9 THE COURT: I was just saying it's obviously the end
10 of the trial day. I am going to ask everyone to return
11 tomorrow at the regular time.

12 As to the jurors, when you are all in, you do not
13 have to wait to come into the courtroom. When you are all in
14 the jury room with each other and no one else, you may resume
15 your deliberations.

16 I know the alternates understand that I am asking
17 that they return and Dennis will collect you tomorrow. Okay.

18 Don't talk about the case at all. Thank you so
19 much.

20 (Jury exits.)

21 MS. MACEDONIO: Your Honor, do you want us here at
22 9:30 or is 10 o'clock okay? How would you like us --

23 THE COURT: I prefer you being here at 9:30. I
24 don't know what's going to happen.

25 MS. MACEDONIO: No problem. See you then.

3875

1 THE COURT: Thank you.

2 MS. ARGENTIERI: Good night, Judge. Thank you very
3 much.

4 (Matter adjourned to November 10, 2015 at 9:30 a.m.)

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